STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

- -

The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown &
Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

- -

DEPOSITION OF RICHARD C. NORDINE

Volume II, Pages 266 - 397

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(The following is the continued deposition of RICHARD C. NORDINE, taken pursuant to Notice of Taking Deposition, at the offices of Kilpatrick Stockton LLP, Attorneys at Law, 1001 West Fourth Street, Winston-Salem, North Carolina, on May 9, 1997, commencing at approximately 8:42 o'clock a.m.)

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I N D E X

EXHIBITS		DESCRIPTION	PAGE MARKED
Nordine	1038	File: 84-44104, "ARE YOUNGER ADULT SMOKERS IMPORTANT?" Bates 50444 6555-663	271
	1039	January 15, 1985 letter, Burrows to Winebrenner, Bates 50396 9310-2	292
	1040	March 12, 1986 letter, Caufield to Iauco, Bates 50396 9238-42	298
	1041	September 27, 1982 letter, Burrows to Galyan, Bates 50301 1368-9	323
	1042	"VOLUME IMPACT OF CAMEL YAS GROWTH," Bates 50718 1150-7	329
	1043	February 9, 1989 letter, Pennell to Sanders, Bates 50686 1948-50	343
	1044	March 20, 1989 letter, Pennell to Winebrenner and Sanders, Bates 50686 0144	353

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1045	March 14, 1989 letter, Snyder to Winebrenner, Bates 50686 0145-6	359
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P R O C E E D I N G S

(Witness previously sworn.)

(Plaintiffs' Exhibit 1038 was marked for identification.)

RICHARD C. NORDINE

called as a witness, being previously sworn, was examined and testified as follows:

ADVERSE EXAMINATION (cont'd)

BY MR. FINZEN:

Q. Good morning, Mr. Nordine.

A. Good morning.

Q. I'm going to continue with your deposition today and remind you, sir, that you remain under oath for this --

A. Yes.

Q. -- session.

I've handed you before we began this morning to review a document that's been marked as Plaintiffs' Exhibit 1038; is that right?

A. Yes.

Q. And have you had a chance to review that document?

A. I have.

Q. Have you seen this document before?

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A. Yes.
Q. And what is this document?
A. The title of the presentation is a question, "ARE YOUNGER ADULT SMOKERS IMPORTANT?"
Q. And the first page of this document, which is Bates numbered 50444 6555 through 6663, has a file number at the top 84-44104. Do you see that, the very front page, the cover?
A. Yes.
Q. Do you know what that file number refers to?
A. No, I don't.
Q. Was there a -- a file that was opened into which all of the materials relating to the younger adult smoker study that you had -- had done went?
A. In reference to this number here?
Q. Yes.
A. I don't know what this number represents. It's a library number, I believe, but I'm not sure.
Q. My question is a little more general than that. Do you know whether there was a file into which all of the materials, studies, correspondence and that sort of thing surrounding the younger adult smoker study that you had done both leading up to and then following it went into?
A. I don't know.

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Q. Okay. This document was produced by the Marketing Development Intelligence Center?

A. Yes.

Q. And that was the area where you were employed; is that correct?

A. Not in the Intelligence Center, no. That's the library, is the --

Q. Oh, that's the library term?

A. I'm afraid so.

Q. So it was in the market research area that it was --

A. That's correct.

Q. -- that it was done?

And yesterday we spoke about a follow-up document to the study of younger adult smoker opportunity analysis. Is that -- is this one of those follow-up studies?

A. Yes, this is the one I was referring to.

Q. And the purpose of this was to build on the learning from the younger adult smoker opportunity analysis; is that right?

A. Yes.

Q. Now on page -- I'd like you to turn to the Bates-numbered page 6557.

A. Yes.

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Q. And on that page under Arabic 1, it says that "THERE ARE 2 DISTINCT CLASSES OF YAS." Do you see that?

A. Yes, I see that.

Q. And that is an acronym that stands for young adult smoker?

A. Correct.

Q. And the two classifications that are mentioned are FUBYAS.

A. Yes.

Q. And that, I believe, stands for first usual brand young adult smokers?

A. Correct.

Q. And those are defined in this document as "... YOUNGER ADULTS WHO ARE ALREADY SMOKERS BUT HAVE REACHED THE STAGE OF CHOOSING A FIRST USUAL BRAND"; correct?

A. Come again. I'm sorry, I was --

Q. Sure. The --

That is defined, that term "FUBYS" or "FUBYAS," for short, as "THOSE YOUNGER ADULTS WHO ARE ALREADY SMOKERS BUT HAVE REACHED THE STAGE OF CHOOSING A FIRST USUAL BRAND"?

A. Correct.

Q. And is that the -- the term that was used

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generally to mean that definition inside of RJR?
A. Yes.
Q. And the second distinct class of YAS was referred to as switchers, which was defined as younger adults who have already chosen a first usual brand; is that right?
A. Yes. You know, I would add a switcher would be is then going to choose a second one subsequently would be -- he wouldn't have switched unless he chooses a second one.
Q. Okay.
A. So I would just add that to what was written here.
Q. But in terms of -- of the report itself, the distinction being drawn was between those young adults who had not smoked, chosen a first usual brand, and those who had?
A. Correct.
Q. And it's my understanding that the research that's been done leading up to the younger adult smoker report and following up here is that it is the -- the FUBYAS, the F-U-B-Y-A-S, and not the switchers that have driven the success of the key brands of the century; is that correct?
A. Correct.

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Q. Now if you turn to page 6608, Bates number 6608, do you find that page?
A. Yes.
Q. At the top of the page it says "DIFFERENTIATING WITHIN," young adult smokers, "YAS TODAY: FUBYAS VERSUS SWITCHERS." Do you see that?
A. Uh-huh.
Q. And then it refers to 18- to 20-year-old smokers equal FUBYAS, 21- to 24-year-old equal switchers. Do you see that?
A. I see that reference there.
Q. And is that the definition generally of the age range for FUBYAS and switchers that was used inside of RJR?
A. No, I don't think that was the -- that is not a definition being put here. You know, what is being talked about here is that the FUBYAS would be a better -- would be better approximated by that group as opposed to the 21- to 24-year-old smokers. We cannot -- it is hard to identify a person who has -- who has -- who is in the process of choosing a -- a usual brand because that data isn't included in our tracking studies. So that we have -- you know, in taking historical information, you can't -- you have to make some -- some way of dealing with the fact

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that question wasn't asked in the study, and we're using this as a substitute for the definition which was used earlier.

Q. So generally speaking, recognizing there may be a little carryover, a little -- a little hard to -- to define the range specifically at either end, 18 to 20 is what was determined to be the most likely group that would be choosing a first usual brand?

A. That those smokers would be -- would be more likely to have not chosen a usual brand than some older group would have been to already have chosen a usual brand.

Q. Okay. And is it within that lack of precision that you've talked about, being able to -- to define that, that the FUBYAS could extend to smokers under the age of 18 as well?

A. I don't know.

Q. And turning back to page 6557, the FUBYAS are identified here as the leading indicators of growth and decline in the cigarette business?

MR. TAYLOR: He just needs to get there.

A. Excuse me, I haven't gotten there yet.

Q. Oh, I'm sorry.

A. Okay. I'm with you again.

Q. They --

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They are also identified as the leading indicators of growth and decline within the cigarette business; is that correct?

A. That is correct.

Q. And that was based upon the research that you had done in your area, something that -- a conclusion that you had come to by the time of this report; correct?

A. You know, the thing refers to information put below it here, and I'm trying to -- it's been a long time since I've been involved with this study and I'm trying to recall the details of what this is. Now the -- the information presented in the chart, I can't read what the footnote is because it's pretty small, but I think that footnote refers to a study that was done that did enable us to identify a person's first usual brand at age 18.

So -- well I wish I could read what that source is is what I mean to express because that is referring to the two charts below us here in -- in the presentation, and I don't recall what the source of those charts is.

Q. Do you --

Do you have any reason to believe that those charts do anything but support the statement that the

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first usual brand young adult smokers are the leading indicators of --

A. Yes, that does support that statement, yes.

MS. BIXENSTINE: Objection.

Q. All right. Then if you would, please, turn to the page marked 6609. Do you have that page?

A. I'm there, yes.

Q. The top of that page is labeled "DIFFERENCES WITHIN YAS ON KEY NEEDS." Do you see that?

A. Uh-huh, I see that.

Q. The fourth bullet point below that identifies five key needs.

A. Uh-huh.

Q. Belonging, being different, upward striving, excitement and sex. Do you see that?

A. Uh-huh, I see that.

Q. Those five key needs, as I read this -- and I'm -- I'm asking you to confirm whether I'm reading this correctly or not -- are the five key needs that distinguish the difference between the FUBYAS and the switchers?

A. There is information presented so I want to distinguish what that information was based on. Yes. In this section, I think as we just agreed, the 18- to 20-year-old smoker was being used as a proxy

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for the term "FUBYAS" and that the charts that follow in -- support of the needs that you've identified are shown in the charts that follow, and this chart I believe is a -- is how important each of those age -- each age-group thought a particular want was to them. And the chart shows that that is much higher among 18 to 20, the 25 to -- the 21 to 24 also and other groups, so the chart will illustrate the importance of different -- of different age-groups, if you will.

Q. And those key needs?

A. Yes.

Q. Okay. Let me ask you -- excuse me -- then to turn to page 6552.

A. Okay. 6552?

MR. TAYLOR: Yeah, there isn't.

MR. FINZEN: I'm sorry, did I -- I'm sorry, I meant to say 62, 6562.

A. Okay.

MR. TAYLOR: 6562.

A. I see the chart.

Q. This is a chart that's got a label at the top that says "SHARE AMONG 18-YEAR-OLD SMOKERS, 5-YEAR ROLLING AVERAGE." Do you see that?

A. Yes, I see that.

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Q. And it purports to be a chart of from 1950 at the left-hand margin on the bottom index or axis to --

A. Correct.

Q. -- nineteen eighty, it looks like, two or '81 --

A. Uh-huh, I see it.

Q. -- as far as the chart goes on the right side of the horizontal axis. Do you see that?

A. Yes.

Q. And it purports to be the rolling average of share for both RJR and Philip Morris.

A. Yes.

Q. Yesterday we talked at some length about a -- whether or not in looking at Marlboro and -- and Winston there had been a steady erosion of the share of smokers in the 14-to-17-year age-group. Do you remember us talking about that?

A. I remember that.

Q. And there was some question about whether it had been constant through the '70s or whether it was more the latter half of the '70s. Remember that?

A. Uh-huh.

Q. This --

This is a little different because, as I understand this chart, this gives all brands for both

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RJR and Philip Morris; is that correct?
A. That's correct.
Q. So this purports just to look at 18-year-olds with all brands of both Philip Morris and RJR and the trend on a five-year rolling average from 1950 through 1981; correct?
A. Yes.
Q. And does this chart indicate that -- that somewhere around the beginning of 1970 for the first time the share among 18-year-olds of Philip Morris exceeded that of RJR during the period that was under study here?
A. Yes, but I'd caution you I don't think this data is very reliable. I know how this study -- how this particular chart was put together, and it was a fairly unreliable methodology, so I -- I would hesitate to make any specific conclusions from the chart.
Q. Well let me ask you this: In terms of the -- at least the 18-year-old group, the chart would indicate, would it not, that the -- somewhere in early 1970 for the first time in the period being recorded here the share of 18-year-old smokers of -- of Philip Morris exceeded that of RJR?
MS. BIXENSTINE: Objection, asked and

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answered.

A. Would you just permit me to -- to make my conclusion about what the chart indicates since I have some familiarity with the information and --

Q. I need to have an answer to my question, if that's what the chart shows.

A. Repeat -- repeat the question then.

Q. Sure. Does this chart show for the period under study that sometime in early 1970 for the first time in the period studied the share of 18-year-old smokers for Philip Morris exceeded that of RJR for the first time?

MR. TAYLOR: You need to --

MS. BIXENSTINE: Objection.

MR. TAYLOR: You need to answer his question, but you can explain your answer in any way that you think is appropriate so that he gets a truthful response.

THE WITNESS: Yeah.

A. If you believe this -- you're making -- you're making a question about something that is outside the data source. The data source would say that, but the data source cannot be considered reliable so that generalizing from the data source is not -- is not warranted. This data source was self-reported usual

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brand that they smoked when they were 18 by their recall, and that recall was backed up to form this chart. And that is hardly reliable data, as to what somebody recalls doing perhaps 20 years ago in some cases.

So, you know, I think except for the very broadest kind of conclusions, I would not try to analyze in any detail what that particular data was suggesting.

Q. Well I'm going to move to strike that answer as nonresponsive and would ask you whether or not the chart does show that at some time in early 1970 for the first time in the period being studied the share of 18-year-old smokers of Philip Morris exceeded that of RJR for the first time.

MS. BIXENSTINE: Objection, asked and answered.

MR. TAYLOR: Again you need to answer his question, but you can explain your answer in any way that you deem appropriate so that he gets a truthful response.

THE WITNESS: Okay.

A. The answer to your question then is this data does show that what you ask is correct. Yes, they did pass them, but as I have said, the -- the data is

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unreliable data, so I would make no firm conclusion on it.

Q. Is there somewhere in this report where you say that the chart at Bates page 6562 contains unreliable data?

A. I don't -- I don't know. It's labeled as what it says here. I don't see a source of the data listed, however, but --

Q. To whom was this report distributed?

A. It was given to several groups, given to -- it was a widely circulated public presentation.

Q. And at that time within your group, you were not in the habit of distributing widely circulated information that was unreliable, were you, sir?

A. I'm pretty careful to explain when data is unreliable and when it isn't.

Q. And --

And so is there someplace in this report where you explained that the chart at Bates page 6562 contains unreliable data?

A. No, there is no place in the thing. There -- there is no statement that this is unreliable that I'm aware of. There may be. I don't know it. I don't know if there is or not.

Q. As I look at the -- the chart for RJR following

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the early part of 1970, there appears to be a steady downward turn until sometime approximately late 1974 or early 1975. Do you see that?

A. I see that.

Q. And then there is an upturn for a period of time that looks to be until about 1979. Do you see that?

A. I see that.

Q. And then the downturn to the end of the chart appears to be steady decline after that; is that correct?

A. I see that.

Q. Did your study and analysis show what it was that caused that upturn in approximately 1975?

A. Well I guess I would say that it was caused by Marlboro since they got a large part of that share that we didn't have. It would be speculation on exactly what components caused that to happen. I don't know, but --

MR. TAYLOR: Don't speculate.

THE WITNESS: Okay.

Q. So you're clear about my question because I -- I'm not certain from your answer if you were, I'm referring to the period of time around 1975 when there was an upturn in the RJR curve.

A. Oh, an upturn in the RJR curve?

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Q. You see that?
A. Uh-huh.
Q. That's -- that's what my question went to, and I think you were misunderstanding me.
A. I -- I'm sorry.
Q. So let me ask it again. Did your analysis for this report provide any data to show why there was an upturn in the RJR share among 18-year-old smokers somewhere approximately in that 1975 time frame?
A. I -- I am not prepared to say that this means there was an upturn. There must be better information than this that would bear that out, so I would not make a conclusion on this data that there even was an upturn at that time. There is other data that is more reliable than this, I believe.
Q. The chart shows an upturn; however; correct?
A. Yes, the chart based on unreliable data shows an upturn on this graph.
Q. And as you sit here today, you don't know what it was based upon your study that would have caused that upturn in 1975?
A. I don't know what it was in this study that caused this study to show an upturn, and I'm not certain there even was an upturn so that it does not necessarily correspond to reality in any sense.

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Q. And did you see any data during your study that indicated there was an upturn in approximately 1975 due to a direct advertising appeal that was made to smokers under the age of 18 at that time by RJR?

MS. BIXENSTINE: Objection.

A. Could you restate the question only because I think you're -- it's a multiple question with -- it is not only saying something that you believe happened as well as the cause of it, and it's a multiply edged question. If you'd break it down --

Q. Sure.

A. -- I'd be happy to respond.

Q. Sure. You recall yesterday we saw the document that was the report -- purported to be the report to the RJR board showing a direct advertising appeal to smokers under the age of 18?

MS. BIXENSTINE: Objection, mischaracterization.

Q. Do you remember that document?

MR. TAYLOR: Objection.

A. No, I recall being exposed to a document that I have not seen before and -- and we read through it and I agreed that what you read to me was what was written.

Q. And that what was written there said that there

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was going to be a direct appeal to smokers under the age of 18; isn't that correct?

MS. BIXENSTINE: Objection, --

MR. TAYLOR: Objection.

MS. BIXENSTINE: -- mischaracterization.

Q. Do you remember the document, sir?

A. I remember the document.

Q. And -- and while I understand you said you hadn't seen it before, I'm -- I'm simply asking you now, you recall that there was a document that said the 1975 advertising campaign for -- was going to be directed to smokers under the age of 18. Do you remember that?

MS. BIXENSTINE: Objection, --

MR. TAYLOR: Objection.

MS. BIXENSTINE: -- mischaracterization.

MR. FINZEN: Let's get the document out and look at it then.

MR. TAYLOR: Okay. I think that's a fair way to do it then.

BY MR. FINZEN:

Q. This is Plaintiffs' Exhibit 1035 --

A. Uh-huh.

Q. -- from yesterday. I would ask you to turn to Bates number page 1313.

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MR. TAYLOR: 1313.

A. Uh-huh.

Q. Chart number seven.

A. Uh-huh.

Q. Do you have that?

A. Uh-huh, I'm reading it.

Q. And it says at the top "THUS, OUR STRATEGY BECOMES CLEAR FOR OUR ESTABLISHED BRANDS: 1- DIRECT ADVERTISING APPEAL TO THE YOUNGER SMOKERS," and then it goes on to 2 and 3. Do you see that?

A. Yes.

Q. And if you turn to Bates-numbered page 1311, the younger adult market is defined as the 14-to-24-year-old -- 24-year-old age-group. Do you see that?

A. Which point is that again, the chart number three you're saying?

Q. Chart two.

A. Two. That's what it says.

Q. And my question that I'm asking you is, you remember our discussion from this document yesterday. My question to you is: Did anything that you did for preparing -- for purposes of preparing Plaintiffs' Exhibit 1038 indicate to you that the upturn that appears in that exhibit at page 6562 was

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due to the fact that there had been a direct advertising appeal of all strategic brands to smokers age 14 to 24?

MS. BIXENSTINE: Objection.

A. My answer is no. I have seen nothing that would suggest that.

Q. Okay. Following the younger adult smoker report and this -- this follow-up work, it was the duty or responsibility of your strategic research group to assist in developing a brand to successfully increase RJR's share among young adult smokers; correct?

A. No. We gave this presentation, and others then carried it forward. We did not become involved in developing such things. We made recommendations.

Q. My question was: It was your group's job to assist in the development of a strategic -- or of a successful increase in RJR's share among young adult smokers?

MR. TAYLOR: Objection.

MS. BIXENSTINE: Objection, asked and answered.

A. My answer -- my answer is no, it was not my group's job to do that.

MR. FINZEN: Would you mark this, please, next.

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MR. TAYLOR: Bruce, do we need this anymore?

MR. FINZEN: Not for right now.

MR. TAYLOR: Okay.

MR. FINZEN: You can just push it to the side.

(Plaintiffs' Exhibit 1039 was marked for identification.)

BY MR. FINZEN:

Q. Mr. Nordine, I'm going to hand you what's been marked as Plaintiffs' Exhibit 1039, and it is a document Bates numbered 50396 9310 through 9312. And I would ask you to review that, please, and tell me whether you've seen that document before.

Do you need some time?

A. Yes, I do.

MR. FINZEN: Okay. Let's do it off the record.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Mr. Nordine, off the record you've had a chance to review Plaintiffs' Exhibit 1039?

A. Yes.

Q. Have you seen this document before?

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A. I don't recall seeing it. I -- I was -- apparently have seen it since I was copied on the memo. I don't recall the specifics.

Q. This is a memo from Diane Burrows to J. T. Winebrenner?

A. Yes.

Q. And it's dated January 15, 1985?

A. Yes.

Q. Who is J. T. Winebrenner?

A. He was in marketing. I'm not sure of his exact title in marketing.

Q. And would that have been in an area of marketing different from the strategic research area that you were in?

A. I was in marketing research at the time. He was in marketing, and they were separate departments.

Q. Okay. And was he in marketing that dealt with actually developing marketing for brands or marketing for product?

A. I think so, but I'm not sure.

Q. And the people copied on this were Mr. Fackelman, who was your supervisor at that time?

A. Yes, sir.

Q. C. A. Martin, who is that?

A. I think his name was Charlie Martin.

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Q. And what area was Charlie Martin in?
A. He was in marketing research.
Q. And then you are copied; correct?
A. Uh-huh.
Q. And this document in the first paragraph says that it contains details of the strategic research group qualitative research in August-September '84.
A. Correct.
Q. Do you see that?
And then it goes on to say that -- that that research concluded that Camel holds potentially leverageable interest among 18- to 20-year-old smokers and then, parens, "FUBYAS." Do you see that?
A. I see that.
Q. Is this referencing the report that we've looked at as Plaintiffs' Exhibit 1038?
A. I believe so. I'm not sure.
Q. And is it --
Does it accurately reflect that the feeling of your strategic research group as of January 1985 was that Camel did hold as a brand potentially leverageable interest among 18- to 20-year-old smokers?
A. That's correct.

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Q. And on the last page of this memo, there's a reference to a leverageable spark for Camel in the paragraph at the top of the page. Do you see that?
A. Well let me read it briefly here.
Q. Sure.
A. Yes, I see it.
Q. So based upon the research that had been done, the smoker analysis report, your group at least believed that the Camel provided a potential goal at capturing a increased brand share among 18- to 20-year-old smokers for RJR?
A. Yes.
Q. And that was the target group for the effort with Camel?
A. We're just responding to --
MS. BIXENSTINE: Objection.
A. This report is just responding to research we conducted for different reasons, mind you, about what we learned about this particular subject in doing our research. I don't -- this does not deal with what -- what Camel's target may or may not be. I don't know.
Q. But that was the suggestion of your group, correct, that Camel had a leverageable spark among the 18-to-20 group?

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A. That's --

MS. BIXENSTINE: Objection.

A. We felt that Camel was -- was -- was well seen, you know, well perceived by the smokers we interviewed in San Diego; I believe that's where it was.

Q. And if there was, based upon the recommendations of the strategic research group, some emphasis made by RJR to 18- to 20-year-old FUBYAS, it is true, is it not, sir, that that effort would necessarily reach smokers younger than the age of 18?

MS. BIXENSTINE: Objection.

A. I don't know.

Q. Did the recommendations of the strategic research group ultimately become accepted by the -- by the marketing group?

A. Some did and some didn't.

Q. And Camel did undergo shortly after the recommendations of your group a new advertising campaign developed to appeal to the young adult smokers; is that correct?

MS. BIXENSTINE: Objection, vague.

A. Would -- would -- are you willing to be more specific?

Q. I don't know that I can. Did Camel undergo

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shortly after the recommendations of your group a new advertising -- advertising campaign developed to appeal to young adult smokers?

MS. BIXENSTINE: Objection, vague as to the meaning of "shortly."

A. Camel did change what it was doing in marketing within -- within five years after we had said something.

Q. And are you familiar with the fact that that change that Camel did with regard to its advertising was based on the principal -- principal objective that it was directed toward using peer acceptance and influence to provide motivation for the target young adult smokers to switch or -- or adopt Camel?

MS. BIXENSTINE: Objection.

MR. TAYLOR: Objection.

A. I believe there are many reasons why a brand chose to do what they did on Camel, and I am not privy to what all of those reasons were that they chose to change their marketing activities as they apparently did.

Q. And did the research that you had done show that the aspiration among young adult smokers to be cool, a member of the in group, was one of the strongest influences affecting the behavior of young adult

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smokers?

MS. BIXENSTINE: Objection.

A. Please repeat.

Q. Yes. Did the research done by your strategic research group show that the aspiration to be cool and a member of the in group was one of the strongest influences affecting the be -- smoking behavior of young adult smokers?

MS. BIXENSTINE: Objection, compound.

A. I don't recall if that -- if those words that you've used were -- were part of our findings or not. Our findings are listed in the presentation, and the way I recall it, we had the word "belonging," like wanting to be part of a group and fit in with other people. I'm not sure if that's what you're referring to or whether the words you have are listed here or not, but what we have said in the presentation after due study has been written here and I don't recall the exact words. It's been done 12 years ago now.

MR. FINZEN: Would you mark this next, please.

MR. TAYLOR: 1040.

(Plaintiffs' Exhibit 1040 was marked for identification.)

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BY MR. FINZEN:

Q. Mr. Nordine, I'm going to hand you what's been marked as Plaintiffs' Exhibit 1040, with Bates numbers 50396 9238 through 9242, ask you to look at that document and tell me whether you've seen it before.

Do you want some time to review it?

A. I do.

MR. FINZEN: Off the record, please.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Mr. Nordine, off the record you've had a chance to review Plaintiffs' 1040?

A. Yes.

Q. Have you seen this document before?

A. I don't recall seeing it before, no.

Q. Is it possible that you may have seen it while you were employed at RJR?

A. It's possible.

Q. This is a memo dated March 12, 1986 to Mr. D. N. Iauco?

A. Iauco.

Q. Iauco. Who is D. N. Iauco?

A. He is in the marketing department. I'm not sure

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of his title. He's -- he was in the marketing department at that time too.

Q. And it is written by an "R. T. Caufield" --

A. Uh-huh.

Q. -- typed on the last page with a signature above it of "Rick T. Caufield"?

A. Uh-huh, yes.

Q. Do you know who Mr. Caufield is?

A. He was in the marketing department, I believe brand manager, I suspect. I'm not sure what his title was.

Q. And there are a number of cc's listed in the bottom of the page, --

A. Uh-huh.

Q. -- the first one being Ms. F. V. Creighton.

A. Uh-huh.

Q. Do you know who she was?

A. That would be Fran Creighton. She is in the marketing department.

Q. And Mr. E. C. Leary?

A. That would be Ed Leary, in the marketing department.

Q. Mr. S. M. Marlow?

A. I don't know the name.

Q. Mr. G. C. Pennell?

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A. I believe that's Cliff Pennell, in the marketing department.

Q. And Mr. B. W. Schweig?

A. I don't know the name.

Q. And Mr. J. D. Wilkins?

A. I also don't know that name.

Q. Now the re: line of the memo reads "CAMEL New Advertising Campaign Development."

A. Uh-huh.

Q. And the first introductory paragraph says that this was forwarding brand group's recommendation covering key aspects of Camel's new advertising campaign development project.

A. Yes.

Q. And the target audience, as I understand it, of this new campaign was to be 18- to 24-year-old male smokers?

A. I believe -- I believe it says what that is in here.

Q. Was that your understanding as well when you mentioned earlier that at some time after your report there was a -- a campaign of some sort with Camel cigarettes? Was that your understanding, that whenever that campaign started, it was directed to 18- to 24-year-old male smokers?

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A. That is my understanding, although I have no -- no knowledge of that fact. That's -- I would believe that, yes.

Q. And that was done at least in part on the strategic research that came out of your group; correct?

MS. BIXENSTINE: Objection, calls for speculation.

A. That was done for many reasons. I suppose what we did in our group was one -- one of the reasons that they made their decision as they did.

Q. And under the first numbered paragraph with the Arabic number at the margin number 1, "TARGET AUDIENCE," where they address the 18- to 24-year-old male smokers, at the bottom of the page it refers to "... creative exploratory will emphasize approaches which employ universal cues and symbols having motivational value outside of the prime prospect group as well." Do you see that?

A. I see the sentence, yes.

Q. And is that a way of saying that while the group targeted would be 18 to 24, the universal cues and symbols that would be used would necessarily have motivation to people on either side of that 18-to-24-year-old group?

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MS. BIXENSTINE: Objection.

A. I don't know what Mr. Caufield meant by that; he doesn't say and I have not seen this memo before that I can recall, so I don't know what he means by that.

Q. Based upon your history with the company in market research, is that a fair assessment, that when you market to a particular target audience using universal cues and symbols, that the target of that audience might be either side of the intended target?

MS. BIXENSTINE: Objection.

MR. TAYLOR: Objection.

A. I'm sorry, I don't -- I don't feel that it's a fair question. I think you are trying to put words in my mouth, and I'm hesitant to answer it because you are trying to cause me to say something which isn't true.

Q. Well, based upon the time that you were at the company, you came to understand, did you not, that if you were going to target advertising to someone who was 18, it was very likely that what appealed to the 18-year-old would also appeal to a 17-year-old? Isn't that correct?

MS. BIXENSTINE: Objection, lack of foundation, mischaracterization.

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A. What -- you know, what is -- what I will say on your comment is only that when you put up a billboard on a -- on a highway, anybody can see that, can drive by, and the fact that we put a billboard up on a highway and somebody sees that thing isn't something that is under the control of the tobacco company. And I'm sure lots of people see every advertisement. 70-year-olds see it and everybody sees -- you know, anybody can see an ad.

Q. And if the motivational cues and symbols of that billboard that you're talking about were aimed at 18-year-olds, it was known inside of RJR that if they were seen by a 17-year-old, it would be motivational to them as well; correct?

MS. BIXENSTINE: Objection, --

MR. TAYLOR: Objection.

MS. BIXENSTINE: -- calls for speculation, lack of foundation, mischaracterization.

A. What was known by RJR was not what you say. They had no knowledge of that at all. That is not a known thing, so I disagree with what you say because it was not known.

Q. So the statement on this memorandum that these universal cues and symbols that would have motivational value to the 18-to-24-year-old group

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would necessarily have value outside of that is not correct; is that what you're saying?

A. I don't know what --

MS. BIXENSTINE: Objection, mischaracterization.

A. I don't know what he means by that.

Q. The next numbered paragraph, addressing the advertising objective -- objective, says that the objective of advertising was going to be directed toward using peer acceptance and influence to provide the motivation to the target smokers.

A. That's what the memo says.

Q. And the intent of the advertising was to project the image that by selecting Camel, that it would enhance their image and their acceptance among their peers?

MS. BIXENSTINE: Objection.

A. Could you repeat again? I thought -- were you reading the memo to me?

Q. Yes, the last part of the numbered paragraph two there.

A. Yes.

Q. That by selecting Camel as a usual brand, these younger adult smokers will project an image that will enhance their acceptance among their peers?

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A. I'll agree that that's what the memo says.
Q. And RJR had long known, had it not, that peer pressure was one of the strongest reasons that a young person starts smoking?
A. It was one of the important -- I'm sorry. Would you repeat it because I think I misread you. I read into something in your question that -- that you did not say. Would you repeat it?
Q. Sure. I said -- I said: RJR had long known that peer pressure was one of the strongest reasons that a young person starts to smoke?
MS. BIXENSTINE: Objection, calls for speculation.
A. I am aware of government studies which said that is all I can say. I can say that I have become aware that that was one of the reasons listed in government studies.
Q. Let me ask you, Mr. Nordine, to take a look at Plaintiffs' Exhibit 1030 that we looked at yesterday.
A. Yes.
Q. Do you recall seeing that yesterday?
A. Yes, we went through this yesterday.
Q. And I'd ask you to turn to the second page of that document, Bates number 50122 1309.

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A. Uh-huh.
Q. Do you see down at the bottom of the page where it says "Conformance"?
A. Yes.
Q. The first sentence says "Probably the most prevalent reason that a young person starts to smoke is the influence of a close friend or 'peers'"?
A. Yes.
Q. And then two sentences after that, "Peer group" -- "group influence is very strong during the teen years," do you see that?
A. Excuse me. The same paragraph?
Q. Same paragraph.
A. I'm with you now.
Q. Skip a sentence and then the next sentence.
A. I see that.
Q. And the sentence after that, "Men, particularly, report that smoking is symbolic of rugged masculinity ...."
A. Yes.
Q. This is a document dated in 1974.
A. Yes.
Q. And so for some years by 1986, some twenty -- or I'm sorry, some 12 years at least, RJR had known that peer pressure was one of the strongest reasons that

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teenagers and young persons, or teenagers I guess this addresses, --

A. Uh-huh.

Q. -- a young person, let's be specific, starts to smoke?

MS. BIXENSTINE: Objection as to the form of the question.

A. Let me say this on it: I was not aware of this memo before, as I said yesterday, and I do not know whether anybody else was even aware of this memo as of that date. So I can't say what RJR did or did not know because I don't know who's aware of this memo.

Q. But as you testified earlier, you were aware while you were in the strategic research group that peer pressure was a strong motivation for a young person to --

A. I became --

MS. BIXENSTINE: Objection, --

A. I became --

MS. BIXENSTINE: -- mischaracterizes the witness's prior testimony.

MR. TAYLOR: Okay. Go ahead and answer the question.

A. I became aware of studies that were published in the public media that talked about that, and that is

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what they said.

Q. And that was known by others inside of RJR as well; correct?

MS. BIXENSTINE: Objection, calls for speculation.

A. That was known by some others and perhaps others not. I don't know.

Q. And looking back at Plaintiffs' Exhibit 1040, turning to the --

A. Okay.

Q. -- second page, --

A. Uh-huh.

Q. -- the third paragraph that starts on the bottom of page one and goes over to the top of page two is -- is entitled "STRATEGIC APPROACH," and at the top of page two it says "Specifically, target smokers' desire to project an image which reinforces their masculinity ...." Do you see that?

A. I see that.

Q. And at the bottom under "COPY STRATEGIES," paragraph five, "Masculine Authenticity"?

A. Where is that again?

Q. Numbered paragraph five at the bottom of page two.

A. Okay.

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Q. "COPY STRATEGIES, A. Masculine Authenticity." Do you see that?
A. What, the very --
Q. The very bottom of the page.
A. The very last sentence?
Q. That section and then the last sentence, yes, that "CAMEL smokers project the masculine ideal of strength, authenticity and self-confidence."
A. Yes.
Q. And that was another objective of the ad campaign, was it not, to project an image which reinforces young adult males' masculinity?

MR. TAYLOR: Bruce, you're asking him about a document he says he hasn't seen before, something about what a department was doing that he wasn't involved with. You know, those are just not fair questions of this man. I'm sure you'll have a chance in the depositions to get the author of this document, and, you know, I don't know how you're advancing your ball.

But if you can answer his question based on your personal knowledge, do so.

A. Okay. Please re --

MS. BIXENSTINE: Objection.

Q. Yes. The object, this was another object of the

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advertising campaign, to target young adult male smokers' desires to project an image which reinforced their masculinity; correct?

MS. BIXENSTINE: Objection. There isn't even a specific campaign that's referenced in this document.

MR. FINZEN: All you need to say is "objection."

MS. BIXENSTINE: Objection.

MR. TAYLOR: Well I can say more and I will say that this document says what this document says, sir, and this is not a practice, I would respectfully suggest to you, that it is recognized and acceptable in our court. Again you'll have the opportunity to address all of these folks, I believe, and this man's never seen this document. It's just not fair.

MR. FINZEN: Mr. Taylor, you're also restricted to "objection" under the rules and guidelines of this deposition. I would please ask you to re --

MR. TAYLOR: Sir, with all due respect, I believe that I'm governed by the North Carolina rules of court and North Carolina practice in this deposition, so --

MR. FINZEN: Well I --

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MR. TAYLOR: -- I would suggest to you that the person I would seek for a protective order if I think you're asking improper questions is located here in Forsyth County.

MR. FINZEN: That's not what the stipulated order that we have as the first exhibit to this deposition is.

MR. TAYLOR: Sir, I'm not a party to the stipulated order.

MR. FINZEN: Well that order governs the deposition that we're on here today.

MR. TAYLOR: As between you gentlemen, not as between me and my client and you, it is my position.

MR. FINZEN: So it's your position that you are not restricted to the word "objection" and a simple explanation of the objection; you can have speaking objections?

MR. TAYLOR: It is -- sir, I will -- I'm not going to -- here to answer your questions, but it's my position that I'm governed by North Carolina rules of court.

MR. O'FALLON: And what's RJR's position? What's your position on what he just said?

MS. BIXENSTINE: I --

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MR. O'FALLON: State it for the record. The court in Minnesota will be extremely interested.

MS. BIXENSTINE: It's not my position to --

MR. O'FALLON: State it for the record.

MS. BIXENSTINE: -- to say what Mr. Taylor can and can't do. He is not under the jurisdiction of the court of Minnesota.

MR. O'FALLON: So it's RJR's position that he is not governed by the rules under the Minnesota court? I just want that stated clearly for the record by RJR.

MS. BIXENSTINE: It's not for me to make that determination.

MR. O'FALLON: So you will -- you will take no position on this issue?

MS. BIXENSTINE: Reynolds is governed by the -- the order which we have signed.

MR. O'FALLON: You are not going to answer my question, which is: What is RJR's position as to Mr. Taylor?

MS. BIXENSTINE: It's not for me to say.

MR. O'FALLON: So you will take no position?

MR. TAYLOR: When we figure -- finish our argument, I suggest it would be a good time for me to

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get that lunch order in, so you can do whatever you want to do.

MR. REDGRAVE: Mr. O'Fallon, excuse me, the Minnesota court order I believe of May 7th indicates that the disputes of this deposition should be submitted to Judge Fitzpatrick. We are -- we were a party to what was proposed to Judge Fitzpatrick and we're -- we're going to follow that.

MR. O'FALLON: So it's your position that Mr. Taylor is not appropriate in taking his disputes to the judge in Forsyth County, that the disputes -- any disputes in this deposition should be taken to Judge Fitzpatrick? I just want that position clear on the record.

MR. REDGRAVE: If we have disputes that are going to require judicial intervention, I can't -- just as I haven't been able to direct Mr. Taylor to do anything else so far, I don't know what he is going to do, but if it comes up and we're calling a judge, for Reynolds, we're going to be calling Judge Fitzpatrick.

MR. O'FALLON: And you would take the position before a Forsyth County judge that Judge Fitzpatrick is the appropriate judge to call with regard to disputes; correct?

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MR. REDGRAVE: I'm not going to speculate on that because if there's a dispute, I -- I'm not going to be going to a Forsyth County court; I'm going to be calling Judge Fitzpatrick. I mean, that's -- that's what I agreed with Ms. Walburn from your office, and that's -- that's what the order provides and we're going to follow Judge Fitzpatrick's order.

MR. TAYLOR: Is everybody finished? Can I call lunch?

MS. BIXENSTINE: Can we take a rest room break? I need to go to the rest room.

MR. FINZEN: Sure.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MR. FINZEN:

Q. Mr. Nordine, let me restate the question that was before you when we took our break.

One of the objectives of the new Camel advertising campaign was to target the young adult male smokers' desires to project an image which reinforced their masculine ideal; isn't that correct?

A. The memo that you refer to is a development program. I don't know if that led to a campaign or

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not.

Q. And again referring back to Exhibit 1030, which I think you have in front of you there, we looked at a few moments ago.

MR. TAYLOR: 1030, okay, there it is.

A. I see it here.

Q. Again since at least 1974, RJR knew that another important aspect to young adults beginning smoking, particularly men, was the appeal to masculinity?

A. I don't know.

MS. BIXENSTINE: Objection.

Q. Especially the teenage boys began smoking because they wanted to project an image of being mature and manly?

MS. BIXENSTINE: Objection.

A. I don't know what Reynolds knew after this period.

Q. At least this memorandum reflects that, does it not, --

A. This --

Q. -- Plaintiffs' Exhibit 1030?

A. Yeah, this -- this memorandum -- this memorandum says what it says.

Q. And this is an internal RJR memorandum dated July 3, 1974; is that correct?

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A. That is correct.
Q. And RJR knew, did it not, at least by 1974 that one of the reasons for the huge success of Marlboros among teenage male smokers was that Marlboro projected this masculine image?
MS. BIXENSTINE: Objection, calls for speculation.
A. I have no personal knowledge of who was aware and who has seen the memo you are referring to here.
Q. Well when you were doing your project on younger adult smokers that we have looked at here in the mid-1980s, you were --
A. Yes.
Q. -- aware, were you not, that one of the reasons that Marlboro was so successful among young adult smoker males was because of the masculine image that it projected? Correct?
A. That was one of the things that contributed to their success.
Q. So the new Camel advertising campaign that was suggested in Plaintiffs' Exhibit 1040 was intended to reach both of these known advertising objectives, the appeal to peer pressure and to young male masculinity desires; correct?
MS. BIXENSTINE: Objection,

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mischaracterization.

A. I don't know what Mr. Caufield intended in the memo. I was not aware of this memo before you showed it to me, and I don't know what he meant.

Q. And during the period of time that you were in the strategic research area, which included March of 1986 -- correct?

A. That is correct.

Q. It's your testimony that you were unaware that there was a new Camel advertising campaign that was intended to reach both the objective of projecting peer acceptance and masculinity?

MS. BIXENSTINE: Objection, lack of foundation that there was a campaign at the -- new campaign at that time.

A. Please re --

Q. Yes, let me -- I'll restate it.

During the period of time that you were in the strategic research area, including March of 1986, it's your testimony that you were unaware that there was a new Camel advertising campaign that was intended to reach both the objective of projecting peer acceptance and masculinity to young adult smokers?

MS. BIXENSTINE: Objection, --

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MR. TAYLOR: Objection.

MS. BIXENSTINE: -- lack of foundation.

A. I have no personal knowledge. I was not involved in their development. Any -- any -- anything that I might have thought would have been hearsay.

Q. So you had no awareness of any kind?

A. There might have been -- people would talk, and I don't know. I've not -- I've not seen -- aside from the documents you're showing me, which I haven't seen before, I was not involved and I -- brands are always in the process of developing and refining their campaigns, so I have knowledge in the sense that it's continually going on, but I have no specific knowledge of the particular one you're referring to.

Q. Are you aware of the development of the Joe Camel campaign in 1987?

A. I am aware of it, yes.

Q. And it's true, is it not, that the campaign development memo that we're looking at here, Plaintiffs' Exhibit 1040, led to the development of the Joe Camel campaign in 1987?

A. I don't know.

MS. BIXENSTINE: Objection, calls for

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speculation.
Q. You don't know if that happened or not?
A. I do not know.
Q. Do you know what pack programs are?
A. Generally, not -- not specifically. Generally I do.
Q. What are --
And what are they?
A. They're -- an example would be they have buy one, get one free is a pack program. Occasionally you can buy a pack program with a lighter attached. There might be counter displays at a counter at a store.
That is the sort of thing that I believe that re -- that phrase refers to.
Q. And is it generally true that these pack programs at R.J. Reynolds were aimed at convenience stores?
A. Among other places. That would be among -- among the places they would have those places, would be a convenience store, I believe.
Q. And based upon work that was done in the strategic research area by 1986, it was known in your department that convenience stores tended to be a place where young adult smokers purchased cigarettes

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more often than not?
A. I'm generally aware that they were more likely to purchase them there than -- than older smokers would, yes.
Q. And --
And it was also known, was it not, that younger smokers tended to be pack purchasers rather than carton purchasers?
A. That is --
MS. BIXENSTINE: Objection to the form of the question.
A. Please -- please restate then.
Q. Sure. It was generally known also within the research department that young adult smokers tended to be pack purchasers rather than carton purchasers?
A. You know, it was known by me and it was known by some others. I can't speak for everybody.
Q. And another critical marketing aspect of the new Camel advertising campaign revolved around support by retail pack programs; isn't that correct?
A. I have no special knowledge of the Camel campaign itself. I -- I -- it would be speculation for me to say that. I don't know.
Q. It is also true, is it not, that price of -- of cigarettes was a substantial factor affecting the

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buying habits of young adult smokers?
A. Price was a big factor among all groups. Big tax increases are -- are significant events.
Q. And is it also true and known within your strategic research group that price of cigarettes may create a barrier which would prevent the appeal of smoking from developing into an ongoing choice to smoke among young adult smokers?
MS. BIXENSTINE: Objection.
A. I am going to ask you to repeat it. It's a compound question.
Q. Was it generally known within your strategic research group that the price of cigarettes may create a barrier which would prevent the appeal of smoking from developing into an ongoing choice to smoke among young adult smokers?
MS. BIXENSTINE: Objection to the form.
A. That was a hypothesis, I believe.
Q. Was that something that you knew while you were in the strategic research area?
MR. TAYLOR: Objection.
MS. BIXENSTINE: Objection.
A. I have no specific recall of the statement you're referring to. It is a hypothesis that I might have been exposed to.

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MR. FINZEN: Would you mark this, please, next.

(Plaintiffs' Exhibit 1041 was marked for identification.)

BY MR. FINZEN:

Q. Mr. Nordine, I'm going to hand you what's been marked as Plaintiffs' Exhibit 1041, bearing Bates numbers 50301 1368 and 1369. I would ask you to look at that document and tell me whether you've ever seen it before.

Would you like some time to review it?

A. Yes, please.

MR. FINZEN: Off the record, please.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Mr. Nordine, off the record you've had a chance to review Plaintiffs' Exhibit 1041?

A. Yes.

Q. And is this a document that you've seen before?

A. It's similar to one you showed me yesterday. I think it's a little bit different. I have not seen it if it isn't the one we looked at yesterday.

Q. It is not the same document as the one we looked at yesterday.

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A. Okay. I -- I don't recall seeing this one then.
Q. This is a document that's dated September 27, 1982 from Diane Burrows to Mr. P. E. Galyan?
A. Galyan.
Q. Galyan, I'm sorry. Do you know who Mr. Galyan is?
A. Yes.
Q. And what was his position with RJR?
A. He was a manager in the market -- in the forecasting area.
Q. And the copies that are shown on this in the last page are to Mr. J. R. Moore. Do you know him?
A. Yes, I know Mr. Moore.
Q. And where is Mr. Moore located?
A. At the time that this was written, I believe he was in the forecasting area.
Q. And Mr. J. R. Hribar?
A. Hribar.
Q. Hribar.
A. I'm uncertain to his position. He was in marketing research.
Q. Mr. W. W. Doten?
A. He was also in marketing research.
Q. And Mr. R. A. Davis?

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A. I believe also in marketing research.
Q. And for those gentlemen you just identified in marketing research, would that be in the strategic area that you were in or a different marketing area?
A. It would be a different marketing research area.
Q. Was Diane Burrows reporting to you in September of 1982?
A. I do not believe so.
Q. In this memorandum, which has a re: line of "MARKETING IMPLICATIONS OF THE NBER MODELS," Ms. Burrows states that -- that a key finding of the NBER study is that adult males are highly sensitive to price. Do you see that?
A. I see the sentence, yes.
Q. And in the third paragraph, she says "There is no reason to assume that price makes the idea of smoking less appealing to younger adults. But price may create a barrier which prevents that appeal from developing into an ongoing choice to become a smoker." Do you see that?
A. Yes.
Q. Do you recall having Ms. Burrows communicate that information to you while she was working in the strategic research area?

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A. I have no specific recall of that. It could well have happened. I don't know.

Q. And as we --

As you will recall, when we looked at the strategic research report yesterday on younger adult smokers, there was a section in there dealing with -- with price and the impact of price on younger adult smokers?

A. Yes.

Q. And did that information come from Ms. Burrows that went into the report at that point?

A. I believe it would.

Q. Generally speaking, how long did you work with Diane Burrows?

A. How long was she in my group? Is that what you mean?

Q. Well let's start with that, yes. I'm trying to get a parameter on how long you worked with her, but let's start with while she was in your group.

A. I don't recall specifically how long. Perhaps four years, something of this neighborhood.

Q. And do you have a -- a general idea -- again I'm not trying to pin you down to a day on either end, but a general idea of what that four-year period encompassed, from when to when?

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A. 1984 to about maybe 1989, maybe five years.
Q. And did you have occasion to do any work with her when she was not within your group?
A. Interacted with her in other assignments from time to time.
Q. Generally speaking, did you find that Diane Burrows was a -- a good researcher?
MS. BIXENSTINE: Objection, vague.
A. I thought she was an excellent employee.
Q. And was her work as a researcher thorough as far as you knew?
A. Very.
Q. And did she seem fairly meticulous in her work?
A. Yes.
Q. When the Joe Camel campaign got underway, you were still in the R -- RJR strategic research area; is that correct?
A. What date are you referring to? I don't know of --
Q. In --
A. -- specifically when it started.
Q. In 1987.
(Discussion off the stenographic record.)
A. In 1987 I was in strategic research.
MS. BIXENSTINE: And I objected to lack of

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foundation as to the date.

Q. And did you have occasion in the strategic research area to -- to track the performance of RJR brands from 1987 forward until you left the company?

A. Yes.

Q. And it is true, is it not, that following the introduction of the Joe Camel campaign, that Camel began to show record growth among young adult smokers?

MS. BIXENSTINE: Objection.

A. Yes, it showed growth.

Q. And that growth was actually record growth for RJR; is that correct?

MS. BIXENSTINE: Objection.

A. Could you be more specific?

Q. Sure. Do you recall that in -- in 1988 Camel showed a 2.2 point national gain among young adult male smokers?

A. Yes.

Q. And that that was the largest 12-month gain ever for RJR?

MS. BIXENSTINE: Objection.

A. I'm -- I'm hesitant to re -- respond to the word "ever." I don't know what we did in 1955, for instance, but it was -- was good performance if

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that's what that's mean to -- meant to imply.

MR. FINZEN: Mark this as next in order.

(Plaintiffs' Exhibit 1042 was marked for identification.)

BY MR. FINZEN:

Q. Mr. Nordine, I'm going to hand you now what's been marked Plaintiffs' Exhibit 1042, with Bates numbers 50718 1150 through 1157, ask you to look at that document and tell me whether you've ever seen it before.

Would you like some time to review it?

A. Yes, I would.

MR. FINZEN: Okay. Off the record, please.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Mr. Nordine, off the record you've had a chance to review Plaintiffs' Exhibit 1042; correct?

A. Correct.

Q. Have you seen this document before?

A. I don't recall.

Q. While you were in the strategic research area in 1988, do you recall seeing reports of this type reporting on the volume of Camel sales among young

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adult smokers?
A. Please repeat.
Q. Yes. While you were in the strategic research area during 1988, do you recall seeing reports of this type that -- that did report on the volume growth of Camels among young adult smokers?
A. I don't recall it, no.
Q. I'm not asking now about this specific. I'm asking about whether you saw --
MR. TAYLOR: He couldn't have seen this --
Q. -- documents generally.
MR. TAYLOR: -- report in 1988. Just --
A. What I mean to say is it's possible, but I have no specific recall of seeing -- of getting these on any basis.
Q. Do you recall seeing reports of this type or that reported on the volume growth of Camel among young adult smokers in 1989?
A. I can't recall it by year. I can't recall 1989 at all, and I -- I can't recall particular documents that I may or may not have seen.
Q. Well, this document, which is labeled at the top "VOLUME IMPACT OF CAMEL YAS GROWTH," --
A. Yes.
Q. -- says in the -- in the first paragraph "In

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1988, CAMEL Ex. Regular posted a 2.2 point national gain in usual brand share among males 18 to 24 (the brand's target) and a gain of 1.4 points among total 18 to 24 (YAS)." Do you see that?

A. I see that.

Q. While you were in the research area, do you recall learning at some point that in fact in 1988 Camel Ex. Regular had posted this 2.2 point national gain in males 18 to 24?

MS. BIXENSTINE: Objection, asked and answered.

A. I monitored the performance of all of our brands demographically quite independently, and I don't -- I don't recall whether anybody sent me reports of what they thought about that or not. But I was aware of all of Reynolds brand performance among demographic groups.

Q. And this memo indicates that that 2.2 point national gain among 18- to 24-year-old males was the largest 12-month YAS gain ever recorded on Tracker for Camel or any other brand; correct?

A. That's what the memo says.

Q. And do you recall that by 1988 Camel in fact had shown 12-month gains that were record in proportion among young adult smokers?

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MR. TAYLOR: Objection.

MS. BIXENSTINE: Objection to the form of the question, "by 1988."

A. Could you repeat or -- or be more specific?

Q. Sure. By 1989 were you aware --

A. At some point before 1989, is that what you mean?

Q. By 1989, were you aware that Camel growth during the 12 months of apparently nineteen -- calendar year 1988 held the widest gain ever recorded on Tracker for Camel among 18- to 24-year-old smokers?

MS. BIXENSTINE: Objection to the form.

A. I don't know.

Q. What was Tracker?

A. It was a tracking system that the marketing research department oversaw that would record people's usual brand. I think the study was conducted every month or something like this. They would -- they would continually interview people to find out what was their usual brand.

I have -- I don't have detailed knowledge of what went into that study, but Tracker was an ongoing tracking system that the -- that the company maintained.

Q. And while you were monitoring that system in

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your research area -- and you were; correct?
A. I was monitoring the data that came out of it.
Q. The data. While you were monitoring that data, did you understand that this increased growth in Camel among young adult smokers closely followed the timing of the key changes in Camel marketing?
A. There was a correlation with that. The -- what I would add, though, is much of this memo I think is concerned with is that growth real or is it some statistical aberration, so there was a question of whether there was growth or not growth even at that time.
Q. But --
A. There were larger numbers recorded shortly after 1988 or '89.
Q. And this memo indicates that -- that close timing with regard to the change in Camel marketing was two -- with regard to two specific points; correct?
MS. BIXENSTINE: Objection.
MR. TAYLOR: You want -- is there something that you want to direct his attention to in this --
MR. FINZEN: Sure.
MR. TAYLOR: -- multipage memo?
Q. The first page, two bullet points, this memo

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indicates the timing of the turnaround was closely related to the national expansion of the Old Joe imagery. Do you see that?

A. I see that.

Q. Is that your recollection while you were monitoring the volume of Camel share among 18- to 24-year-old smokers?

MS. BIXENSTINE: Objection.

MR. TAYLOR: Does this refresh your recollection, your independent recollection, jog your memory? That's his question.

A. It doesn't jog my memory.

Q. Is it consistent with your memory of the expansion of Camel among young adult smokers being in close proximity to at least the national expansion of the Old Joe imagery?

MS. BIXENSTINE: Objection.

MR. TAYLOR: Objection.

A. There is a time correlation between their increase and Old Joe's imagery. I don't know how specific that is. That was not part of something that I was responsible to know. I don't -- you know, I don't know how specific I can be.

Q. And was it your recollection as well that the brand share of Camel among males 18 to 24 also was

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timed closely to the return of the YAS-oriented retail pack programs?

MR. TAYLOR: Again does that jog your recollection of anything?

A. It doesn't jog my recollection. I can read what this report says, but I don't know who got this report and I don't know who wrote this report. I don't recall seeing it myself. I know next to nothing about what's here.

Q. While you were in the research area in the 1988-1989 time frame, do you recall that there was a return of the YAS-oriented retail pack program?

A. I don't recall.

Q. If you turn to the third page, there is a graph at the bottom or in the middle, I guess actually, of the page that says "CAMEL EX REGULAR SHARE IN AREAS OUTSIDE PMA." Do you see that?

A. At the top title? Is that what you're referring to here?

Q. Yes.

A. Yes.

Q. The data on the top line says "TRACKER YAS SOS." Do you see that, the label for that?

A. Still on the same line you're referring to to begin with, the extension of that line?

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Q. No, in the top line of the graph.

MR. TAYLOR: "Top line," you mean inside the box?

MR. FINZEN: Inside the box, correct.

MR. TAYLOR: Over by, it looks like, about 4.8 or something.

MR. FINZEN: Correct, on the upper right-hand corner of the box.

A. The phrase, I believe, is "TRACKER YAS SOS."

Q. Yes.

A. Yes, I see that.

Q. Does that refer to the Tracker system that you talked about a moment ago?

A. I believe so. I don't know.

Q. And would you see data presented in this way in your strategic research area with regard to the Tracker system?

A. Sometimes --

MS. BIXENSTINE: Objection.

A. -- I would see that, yes.

Q. And do you recall seeing the Tracker for young adult smokers share of smokers in 1989 that showed that the Tracker results were the largest sustained increase ever seen in Camel Ex. Regular's share outside of the PMSA area?

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MS. BIXENSTINE: Objection.

A. I believe I've already stated that I was aware that Camel's share increased a great deal, and I would be hesitant to say anything about the greatest ever.

Q. Do you have any reason based upon your recollection of data in the strategic research area available to you in 1989 that would indicate that the data shown in this memo is incorrect?

MS. BIXENSTINE: Objection, mischaracterizes the testimony, lack of foundation.

MR. TAYLOR: Could I ask you, sir, to -- to just restate that question?

MR. FINZEN: Sure.

Q. Do you have any reason based upon your recollection of data available to you in the strategic research area in 1989 that would indicate that the data shown in this memo is incorrect?

A. I have no reason to believe that it's incorrect.

Q. Let me ask you to turn to page two, if you would, under Arabic 2 at the top of the page. Do you see that? Are you on page two?

A. I'm on page two, yes.

Q. Under that heading Arabic 2, there is a

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paragraph, the third sentence of which begins "If we ignore underage volume ...." Do you see that?

A. Third paragraph of that?

Q. Third sentence of the text under paragraph Arabic 2. It starts "If we ignore underage volume ...."

A. I'm sorry, I haven't found it yet.

MR. LAYDEN: I think we're all on different pages.

MR. TAYLOR: What's the Bates number?

MR. FINZEN: Page two, 1151.

A. I've got the right page.

Q. Under the heading number 2 there is a paragraph. The first paragraph of the paragraph --

A. I'm with you.

Q. -- has as a third sentence "If we ignore underage volume," is how it begins. Do you see that?

A. I see that.

MR. TAYLOR: Okay, got you.

Q. During 1988, was the strategic research area given data showing the tracking of underage volume of Camel smoking?

MS. BIXENSTINE: Objection.

A. I don't recall.

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Q. Do you recall seeing information in the strategic research area that did track the volume of underage smoking of any RJR brands in the 1980s?

A. I don't recall seeing that, no.

Q. At any time in the 1980s?

A. Like I say, I don't recall. It's possible. I don't recall.

Q. So you're saying you may have had it? You just don't recall one --

A. May, may not. I don't recall.

Q. And do you have any recollection of seeing data with regard to the volume of underage smoking of Camels anytime after 1987?

A. I have no recollection of such.

Q. Does that mean you just don't recall one way or the other?

A. It means I doubt that I've seen anything like that, but, you know, I can't remember. I don't know. I --

Q. Were you --

A. -- I doubt it.

Q. Were you aware whether anywhere inside of RJR there was tracking done of the underage consumption of Camel cigarettes at any time after 1987?

A. I'm not aware of such activities.

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Q. Was it a belief of yours in the strategic research area following the issuance of your young adult smoking report that retail pack programs play an important role in maintaining loyalty among -- among YAS brands during the period when they are making a first brand choice?

MS. BIXENSTINE: Objection to the form of the question.

A. I will ask you to repeat.

Q. Sure. While -- while you were in the strategic research area following the issuance of your young adult smoking report --

A. Yes.

Q. Are you with me on time frame?

A. I'm with you.

Q. Was it your belief that retail pack programs play an important role in maintaining loyalty among young adult smokers during the key stage in brand choice?

MS. BIXENSTINE: Objection to the form of the question.

A. I don't know if that was my belief or not.

Q. Are you aware of whether it was a belief that was communicated to you at any time that was held by Ms. Burrows?

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A. It's possible. I don't recall.
Q. Do you disagree with that statement based upon the knowledge you had from the research done in your strategic research area?
MR. TAYLOR: Objection.
A. I am generally aware some people held that view, and I'm not so sure that I held that view. That's my comment.
MR. TAYLOR: I'd like to note at this time that I think it's patently unfair to ask -- to present a document and to represent that it came into existence in 1987 or perhaps 1988 or perhaps 1989 when on its face a reader can show that it at least came into existence after 1995.
MS. BIXENSTINE: Based on the last page of the document, I share in that objection. That relates to Exhibit 1042.
MR. FINZEN: Which exhibit are you referring to, Mr. Taylor?
MR. TAYLOR: The last exhibit, 1042, sir.
MS. BIXENSTINE: Bates number 50718 1157 contains data on 1995 versus 1990 -- 1988, excuse me.
MR. TAYLOR: And it's clear that it's not a typo based on the references to 1995 in two other

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places.

MS. BIXENSTINE: So this was well after Mr. Nordine had left the company.

THE WITNESS: That might be a projected figure, though. I don't know.

MR. TAYLOR: Well I don't know. All I can say is whatever it says, it says, but --

MR. FINZEN: Whatever it says, it says. That's right.

MR. O'FALLON: And it sounds like your own witness is now disagreeing with your characterization.

MR. TAYLOR: Give me a break, Dan.

MS. BIXENSTINE: It also refers to annually from 1990 to 1995 on that same page, 50718 1157. The witness hasn't disagreed with anything.

MR. FINZEN: Well, here, folks, the witness has answered questions about statements in the document to the best of his knowledge. I assume we'll move on.

MS. BIXENSTINE: Well I think that you were misleading the witness with your questions.

MR. FINZEN: You're entitled to any thoughts you want to have.

MR. TAYLOR: Absolutely.

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MR. FINZEN: Would you mark that, please, next.

(Plaintiffs' Exhibit 1043 was marked for identification.)

BY MR. FINZEN:

Q. Mr. Nordine, I'm going to hand you now what's been marked as Plaintiffs' Exhibit 1043, which is Bates numbered 50686 1948 through 1950, and ask you to look at that and tell me whether you've seen that before.

Would you like to take some time to review it?

A. Yes, I would.

MR. FINZEN: Off the record, please.

THE REPORTER: Off the record, please.

(Discussion off the record.)

MR. FINZEN: Before we -- before I ask you a question, I want to return to the colloquy we had just before the next exhibit was marked, and we have some information that Mr. O'Fallon wants to put on the record about the date of the exhibit that people were commenting on.

MR. O'FALLON: Yes. I just called back to Minneapolis to determine the date of the exhibit. I believe that exhibit was 142 -- 1042; is that correct?

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THE WITNESS: Uh-huh.

MR. TAYLOR: Yes, sir.

MR. O'FALLON: According to information provided to us by RJR in their 4B index, the date of that document was stated as 00/00/89.

MR. TAYLOR: So that means 1989?

MR. O'FALLON: That's correct.

MR. TAYLOR: Okay. Thank you.

BY MR. FINZEN:

Q. Mr. Nordine, in the -- off the record you've had a chance to review Plaintiffs' Exhibit 1043?

A. Yes.

Q. Have you seen this document before?

A. I don't recall seeing it before.

Q. This document is dated February 9, 1989 and it is addressed to Mr. R. M. Sanders. Do you know him, sir?

A. I -- yes, I know who he is.

Q. And who is he?

A. He's a person who has worked in the marketing area for a number of years. I'm not sure what his job was in 1989.

Q. And it is from a Mr. G. -- well from a G. C. Pennell.

A. Yes.

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Q. Is that a mister?
A. Yes.
Q. And where was Mr. Pennell in -- working at RJR in February of 1989?
A. He was working in marketing.
Q. There are -- are several cc's on the last page, first a Mr., it looks like, H. B. Macfarlane?
A. I see it, the name, yes.
Q. Do you know that individual?
A. No, I don't know who that is.
Q. And Mr. M. W. Long, do you know that individual?
A. I'm not sure of that one. I might or might not. I'm not sure.
Q. Mr. G. G. Strauss?
A. I don't know the -- I don't recognize the name.
Q. And Mr. B. W. Schweig?
A. I don't know that name either.
Q. The re: line of this memo says "CAMEL Performance/Opportunities."
A. Yes.
Q. From the Tracker information that you had available to you in -- in the strategic research area, do you recall seeing information showing that the share of smokers 18 to 34 using Camel cigarettes

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continued to be reported at record levels in the end of 1988?

A. I -- I -- I cannot recall. I don't know.

Q. Do you recall ever seeing or hearing that the December 1988 share of smokers among 18- to 34-year-old males was at 7.0, the highest ever for Camel?

A. I have no specific recall of what happened in 1988 at all regarding Camel.

Q. Do you have any recollection of hearing that at some point in time by the end of 1988 Camel had become the third-largest young adult male smoker brand on the market?

A. I don't recall.

Q. And were you aware that the growth of share of smokers among young adults in 1988 was driven by the 18- to 20-year-olds?

A. I don't recall.

Q. And this would be the group that had been referred to as FUBYAS in the strategic research report that you did after the young adult smoking report?

MR. TAYLOR: Objection.

A. That group was used as a proxy to FUBYAS in that report.

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Q. On page two of -- of this memorandum, in the third bulleted paragraph on the page --

A. Yes.

Q. -- the second sentence says "Both the 75th Birthday and Smooth Character Campaigns have been confirmed as being extremely impactful advertising among target smokers." Do you see that?

A. I see the sentence.

Q. Do you recall doing work in the strategic research area to confirm the efficacy of either the Smooth Character campaign or the 75th Birthday campaign?

A. No.

Q. Did you ever see any documents done outside the strategic research area that confirmed that those two campaigns had been impactful on ad -- impactful advertising on young adult smokers?

A. I don't recall.

Q. Is it possible that you saw it?

A. It is possible.

Q. Generally based upon your recollection, do you have any reason to disagree with the statement made here that those were extremely impactful advertising campaigns on young adult smokers?

MS. BIXENSTINE: Objection to the form.

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MR. TAYLOR: Objection.

A. I have no reason to distrust Mr. Pennell. I assume he says what he -- means what he says.

Q. In the third page, first sentence, Mr. Pennell has said "In conclusion, CAMEL has proven its ability to effectively reach younger adult male smokers ...." Do you see that?

A. I see that sentence.

Q. While you were in the strategic research area at RJR in 1989, did you understand that Camel had indeed by 1989 proven to be an effective brand at reaching younger adult male smokers?

MS. BIXENSTINE: Objection to the form.

A. Could you restate.

Q. Yes. While you were in the strategic research area at RJR in 1989, did you understand that Camel had indeed by that time proven to be an effective brand at reaching younger adult male smokers?

MS. BIXENSTINE: Objection to the form.

A. My opinion would have been a higher level of proof than Mr. Pennell's. I would -- I would say the jury's out is what I would have said. I have no specific recall, but I would -- my standards of proof would be quite high.

Q. So if I understand you correctly, what you say

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is that the data show what the data show, but you would not as of February of 1989 have been in a position to say that you believed it had proven itself as of that date as an effective cigarette for younger adult male smokers?

A. My personal opinion, yes.

Q. Had you seen enough information by 1989 for you to form a belief that Camel was the best bet yet that RJR -- RJR had for a young adult smoking brand?

MS. BIXENSTINE: Objection to the form of the question.

A. I don't know.

Q. Do you recall as of 1989 knowing from the Tracker information that you had that the share of increased young adult smokers smoking Camels appeared to be coming from Marlboro smokers?

A. I'm going to ask you to repeat again.

Q. Sure. Do you recall as of 1989 knowing from the Tracker information that you had that the share of increased young adult smokers smoking Camels appeared to be coming from Marlboro smokers?

A. No, I don't think you'd make that conclusion coming from Tracker.

Q. Did you have any source of information by 1989 in the strategic research area that led you to

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believe that Camel's share of young adult smokers was either leveling off or declining while Camel's share was increasing?

MR. TAYLOR: Objection. I think you misspoke, but you can take a look at it. Each of them --

MR. FINZEN: I'm sorry. That Marlboro's share -- the question should be -- let me ask it again.

Q. Did you have any source of information by 1989 in the strategic research area that led you to believe that Marlboro's share of young adult smokers was either leveling off or declining at the same time that Camel's share was increasing?

A. I don't recall. I don't recall if that was even happening or not. I don't know.

Q. Do you know what diary panel information is?

A. I'm aware of it, yes.

Q. What is that?

A. People are asked to record their purchases on an ongoing basis over time, and a large group of people does that. Those -- those responses are then collected and -- and analyzed.

Q. And is that a source of information on share of smokers that you had available in the strategic

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research area?

A. The marketing research department maintained that for some period of time when I was there, yes.

Q. And in Plaintiffs' Exhibit 1043 on page two, in the last bullet point at the top half of the page it starts with "Diary Panel."

A. I see that.

Q. Do you see that?

A. I see the point, yes.

Q. Here they say or, I should say, here Mr. Pennell says that the "Diary Panel information indicates that 24 percent of all CAMEL product purchased during the key retail periods of the 75th Birthday celebration came from Marlboro smokers compared to a normal average of 15 percent." Do you see that?

A. I see that.

Q. Is that the kind of information that the diary panel would show, not only what percentage of people were smoking a brand, but also where their brands had been previously?

MS. BIXENSTINE: Objection to the form.

A. Yes.

Q. Do you have any reason based upon knowledge you had available to you to believe that the figures reported by Mr. Pennell for Camel product purchased

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and Marlboro purchased as set forth in this bullet point was incorrect?

MS. BIXENSTINE: Objection.

MR. TAYLOR: Do you understand his question? As you sit here on May the 9th, 1997.

A. I -- I take Mr. Pennell at his word.

Q. By 1989 was it your understanding that the company's reaction to the Joe Camel campaign up to that point was such that RJR intended to continue the Joe Camel campaign?

MS. BIXENSTINE: Objection to the form.

A. I don't have a specific recall of 1989 in terms of that at all right now. They obviously have continued the campaign.

Q. The success that was shown for Camel at least through 1988 was based in at least some part on the research that your group had done; correct?

MS. BIXENSTINE: Objection, asked and answered.

A. You have to ask somebody who was responsible for developing that whether it was based on my work or not. I have no personal knowledge.

Q. As you sat in the research area in 1989 and saw the campaign that was developed, did you believe that the recommendations that you had made had been

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accepted?

MS. BIXENSTINE: Objection.

A. I believe that people thought our study was good. I have no idea -- well they did not in fact rep -- accept everything we said, so that all I know is our study was well received, and -- and what impact it had you'll have to ask the people who made those decisions.

MR. FINZEN: Would you mark this, please, as next.

(Plaintiffs' Exhibit 1044 was marked for identification.)

BY MR. FINZEN:

Q. Mr. Nordine, I'm going to hand you now Plaintiffs' Exhibit 1044, which is identified with Bates numbers 50686 0144, ask you to look at that, please, and tell me whether you can identify it.

Would you like some time to review it?

A. I would.

MR. FINZEN: Let's go off the record, please.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Mr. Nordine, off the record you've had a chance

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to review Plaintiffs' Exhibit 1044?

A. Yes, I have.

Q. This is a memo dated March 20, 1989 again from Cliff Pennell?

A. Yes.

Q. To Mr. J. T. Winebrenner?

A. That's correct.

Q. And Mr. R. M. Sanders?

A. Uh-huh.

Q. You've previously identified Mr. Sanders. Do you know who Mr. Winebrenner is?

MS. BIXENSTINE: Objection, asked and answered.

A. I know who he is.

Q. And who is he?

A. I don't know his title. He's in the marketing -- he was in the marketing department for several years.

Q. And have you seen this document before?

A. I don't recall seeing it.

Q. If you look at the list of carbon copies at the bottom of the page --

A. Yes.

Q. -- do you know any of those individuals?

A. I may or may not know M. W. Long. It's

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possible; I'm not sure. I know Mr. Murphy and I know Mr. Weber. The others, I'm not sure whether I know them or not.

Q. And Mr. Murphy and Mr. Weber were in the marketing area?

A. They would be in marketing research.

Q. The re: line of this memo says "CAMEL Performance Analysis."

A. Yes.

Q. And this purports to be a memo that attached a version of MRD's presentation on the Camel performance in 1988. Do you see that?

MR. TAYLOR: It says that, yeah.

A. Oh, okay. Yeah, it's supposed to be an attached document.

Q. Do you recall ever seeing the attached document, an MRD report on Camel performance in 1988?

A. I have no idea what that refers to.

Q. The first bullet paragraph in this document says "CAMEL's ability to reach and convert younger adult smokers is significant with the 18 to 20 year old group driving this growth. Accordingly, the brand should maintain its single-minded focus against this important smoker group." Do you see that?

A. That's what it -- that's what it reads.

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Q. Is that statement consistent with your understanding in 1989 of the effort that was to be made with regard to Camel and in Camel marketing?

MS. BIXENSTINE: Objection.

A. I can't recall what my attitude was in 1988 or '89 with respect to this particular statement.

Q. Did you agree at least based upon the performance that was shown by the cigarette, while you felt the jury was still out, you said a few moments ago, that the share results available to you in the research department indicated that the brand should maintain its single-minded focus against the 18- to 20-year-old age-group smoker?

A. Can -- can you repeat again? I mean, I'm --

Q. Sure. Was there enough data available to you, although I understand from your testimony earlier that you felt personally your opinion would be the jury was still out on whether Camel was the -- the brand that was going to be the big success among young adult smokers -- that was your feeling; right?

MR. TAYLOR: Objection --

MS. BIXENSTINE: Objection.

MR. TAYLOR: -- to that, your characterization of his testimony. But whatever it is, it is.

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Q. Well am I -- am I mischaracter -- I don't want to mischaracterize it. I thought you told me a few moments ago that while the data looked good, you would not have necessarily felt that -- that it was conclusive enough to establish Camel as a young adult smoker brand that was going to be very -- you know, was going to continue to be successful.

A. Let me recall what I think I said. You asked me about Mr. Pennell said that the Camel effort had now proven itself.

Q. Right.

A. And you asked me whether I thought it had proven itself or not.

Q. Correct.

A. I said that I thought that my standard of proof might be higher than Mr. Pennell's.

Q. All right. And what --

A. Now if that's what we're characterizing, I'll just confirm that, in my mind, that's what I said.

Q. Sure, and that's all I intended to do.

A. Uh-huh.

Q. I'm not trying to change your testimony in any way, but what I'm trying to ask you is: At least based on what you had seen, while you didn't necessarily believe it was proven, did you at least

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believe that you'd seen enough that you would agree that the brand should maintain its single-minded focus against the important 18-to-20-year-old smoker group?

A. Well despite not recalling it, I -- I believe I would approve, yes.

Q. And do you recall from being in the market research area in 1989 that that is what occurred, that there continued to be within RJR a single-minded focus against the 18-to-20-year-old smoker groups with regard to Camel?

MS. BIXENSTINE: Objection, calls for speculation.

MR. TAYLOR: Objection.

A. I am not part of the brand group on Camel. I have no specific knowledge of what the Camel brand group did over time on its efforts for the brand.

MR. FINZEN: Why don't we take a break then at this point.

THE REPORTER: Off the record, please.

(Recess taken.)

BY MR. FINZEN:

Q. Mr. Nordine, would you agree that at least through 1988 that the focus of the efforts at Camel was to make it a first-choice brand among younger

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adult smokers?

MS. BIXENSTINE: Objection to the form of the question. What's the start date?

A. I was not involved in the Camel effort. I have no reason to know what their focus is.

Q. Well based upon information available to you in the strategic research area, did you understand that in 1988 the focus had been on making it a first brand choice among young adult smokers, "it" being Camel?

A. We have read memos here this morning which -- which say that, and I believe those memos.

Q. And is that, sir, a reflection of the suggestion made in your young adult smokers report that --

A. I don't -- I don't know that that's a reflection of that at all. I don't know.

Q. That is what you suggested; correct?

A. By what?

Q. That -- that RJR move to a first brand choice in its marketing efforts towards young adult smokers.

MS. BIXENSTINE: Objection.

A. The report speaks for itself. Whatever it said, I don't --

MR. FINZEN: Mark this next, please.

(Plaintiffs' Exhibit 1045 was marked for identification.)

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BY MR. FINZEN:

Q. Mr. Nordine, I'm going to hand you now what's been marked as Plaintiffs' Exhibit 1045, with Bates numbers 50686 0145 and 0146. I would ask you to look at that, please, and tell me whether you've ever seen that before.

Would you like some time --

A. Please.

Q. -- to review it?

MR. FINZEN: Off the record, please.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Mr. Nordine, you've had a chance now to review Plaintiffs' Exhibit ten forty --

A. Forty-five.

Q. -- forty-five while we were off the record; is that correct?

A. That is correct.

Q. Have you seen this document before?

A. I don't recall.

Q. It is a -- a memo that is dated March 14, comma, 1989. Do you see that?

A. Yes.

Q. At the top of the page from Mr. S. L. Snyder to

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Mr. J. T. Winebrenner; correct?

A. Correct.

Q. And you've --

You've mentioned before who those people are?

A. I've mentioned Mr. Winebrenner before. I'm not sure whether we -- whether Snyder's name came up or not.

Q. There are several people copied on the last page or the second page of the memo. You've mentioned Mr. Sanders previously. Mr. Fackelman, was he in your area, in the strategic research area?

A. I'm not sure as of this particular date. He was my boss in earlier years.

Q. And you --

But as of March of 1989, you're not certain whether he was still your boss?

A. No, I'm not certain. He was head of marketing research.

Q. And Mr. Weber, I can't recall whether you've mentioned him before.

A. His name has been mentioned.

Q. Is he someone -- I can't recall -- that you --

A. He was in marketing research.

Q. And Mr. Pennell was as well?

A. I think Mr. Pennell was in marketing, whose

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memos we have talked about.

Q. But that was just marketing, not marketing research?

A. Yeah.

Q. Okay.

A. He would be in marketing, not marketing research.

Q. Got you.

In the opening sentence of this memorandum, Mr. Snyder says that during 1988 Camel's Ex. Regular marketing efforts were focused on making it a first brand choice among younger adult smokers. Do you see that?

A. Yes, I see that.

Q. And that is the suggestion that came from the research that you did following the younger adult smoker report, --

MS. BIXENSTINE: Objection.

Q. -- is it not?

A. I have forgotten specifics, but it may or may not have been.

Q. Let me have you look at Exhibit 1039.

MR. TAYLOR: 1039. This is 38. 39, right here, sir.

Q. Do you have Exhibit 1039 in front of you now?

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A. Yes, I have it.
Q. We looked at that earlier this morning, and in the first paragraph of that memo, which is from Diane Burrows --
A. Uh-huh.
Q. -- she says "... here are some details of the Strategic Research Group qualitative research in August-September 1984 ...."
A. Yes, I read it.
Q. Is that the research that was done by your group following the younger adult smoker report?
A. I believe so.
Q. And that research, does she properly state the conclusion of that research that Camel holds a potentially leverageable interest among 18- to 20-year-old smokers?
A. I believe the phrase here is "potentially leverageable interest," is what the phrase is here.
Q. Yes, and -- and that's among the 18- to 20-year-old smokers which were identified as FUBYAS?
A. Yeah, that were used as a prox -- as a proxy for FUBYAS.
Q. Okay. And my question to you is: The statement in the Exhibit 1045 that the marketing effort had been focused on making it a first brand choice among

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younger adult smokers, that comes directly, does it not, from your strategic research group qualitative research analysis?

MS. BIXENSTINE: Objection, calls for speculation.

MR. TAYLOR: Objection.

A. I don't know.

Q. As of March of 1989, did you still hold the opinion that it is relatively easy for a brand to retain an 18-year-old smoker once it had attracted them?

A. Yes, I held that view.

Q. And based upon the information that was available to you by 1989 on the share of smokers in the 18-to-20 age-group that were smoking Camels, did you believe that that was a confirmation that once 18-year-olds are attracted, it's relatively easy to retain them?

A. No, I didn't see that as confirmation of that, no.

Q. Would a continued growth of a brand among the 18-to-24 age-group be confirmation of the fact that once retained, it's relatively easy -- once attracted, it's relatively easy to retain an 18-year-old smoker?

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A. That would be speculation because the data clearly does not show that, so it would be speculation to say that.

Q. And assuming there were data -- data available that showed a continuing increase over time, would that be confirmation of your belief that once attracted, an 18-year-old smoker is relatively easy to retain?

MS. BIXENSTINE: Objection to the form of the question.

A. No, I don't -- I don't -- I don't see the two things as being linked per se. I don't see the relationship between the two.

Q. So an increased growth among 18- to 20-year-olds that is sustained over time you do not believe confirms your understanding that once attracted, an 18-year-old smoker is relatively easy to -- to retain?

MS. BIXENSTINE: Objection, asked and answered.

A. Speak again, please.

Q. So an increased growth among 18- to 20-year-olds that is sustained over time does not, in -- in your judgment, confirm your belief that once attracted, an 18-year-old smoker is relatively easy to retain?

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MR. TAYLOR: Objection to the form of the question.

A. I believe those are two independent ideas that -- that do not necessarily have to be related.

MR. FINZEN: Would you mark this next, please.

(Plaintiffs' Exhibit 1046 was marked for identification.)

BY MR. FINZEN:

Q. Mr. Nordine, I'm going to hand you now what's been marked as Plaintiffs' Exhibit 1046, a document bearing Bates numbers 50961 0900 through 0910, and I would ask you please to review that document, tell me whether you've ever seen it before.

Do you need some time?

A. I do.

MR. FINZEN: Can we go off the record, please.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Mr. Nordine, while we were off the record, you've had a chance to review Plaintiffs' Exhibit 1046; is that correct?

A. That's correct.

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Q. Do you recall having seen this document before?
A. No.
Q. The first page of this document has at the top "CAMEL (Ex. Regular) POSITIONING EVALUATION." Do you see that?
A. I see that written there.
Q. And on the second page of the document, which has Bates number 0901 -- do you have that page?
A. Yes.
Q. It says in the upper left of the top of the page "SHARE OF SMOKER."
A. Yes.
Q. And then there is a bullet point under that that says "SINCE THE REPOSITIONING, CAMEL'S SHARE OF SMOKERS HAS GROWN." Do you see that?
A. Yes.
Q. Do you know what the term "repositioning" is referring to there?
A. I believe it's a change in positioning, I believe is what the term must mean.
Q. Inside RJR, was the term "repositioning" used to address the campaign that resulted in Joe Camel as an advertising campaign?
A. My recall is it was by some and not by others. It -- it depended on the individual, I suppose.

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Q. So at least by some the entire Camel program that involved Joe Camel was referred to as a repositioning of Camel?

A. They may have. I don't know how they referred to it.

Q. This chart that is at the bottom of this page is identified as "R.J. REYNOLDS CONSUMER TRACKING SYSTEM PROFILE, TOTAL CAMEL (EXC. NF) US - SHARE OF SMOKERS."

A. Yes.

Q. And then there are three different graphs that are displayed here.

A. Yes.

Q. One for total smokers, one for total 18 to 24, and one for total 18 to 34; --

A. Yes.

Q. -- correct?

And if I'm reading this graph correctly, looking at the 18-to-24-year-old graph, the share of U.S. Camel smokers 18 to 24 at the beginning of 1987 was 2.5. Is that listed in percent there?

A. It's not self-evident. It would be consistent with what I know if it was. I don't --

Q. That's -- that's why I'm asking. It's not listed as to whether it is a percent, but based upon

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your familiarity with the tracking information, the consumer tracking system, did it list share information by percent of smokers?

A. I believe it would do it two ways. It would say what percent of the group smoked the brand and what percent of the brand's business or customers were in a group, so they might do it both ways. I -- I feel it's safe to presume this is 2 and a half percent of the people who were 18 to 24 smoked Camel.

Q. And at the end of 1990, if I'm reading this correctly, that share of 18- to 24-year-old smokers was 7.7 percent?

A. Yes, I -- I see that.

Q. And as you read across the end of 1987, the 1988 and 1989, there is an increase each year leading up to the 7.7 percent; correct?

A. Correct.

Q. In the end of 1990, you were still employed at R.J. Reynolds in the strategic research area?

A. I don't think that was my official title in 1990.

Q. Were you still within the area, the research -- strategic research area?

A. My functions were largely strategic research in nature, but I do not believe that was my title at the

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time.
Q. Are the 18- to 24-year-old U.S. share of smokers data presented on Plaintiffs' Exhibit 1046 consistent with your recollection of the tracking information you saw showing share of smokers while you were at R.J. Reynolds?
MS. BIXENSTINE: Objection.
A. Yes.
Q. And are you aware that by the end of 1991 the share of smokers in the 18-to-24 group went to 10.1 percent?
A. I'm unaware of specific figures.
Q. If there were data available that showed the share of smokers for 18 to 24 at 10.1 percent in the end of 1991, beginning of 1992, would you have any reason to quarrel with that number?
MS. BIXENSTINE: Objection. He wasn't with the company at that time.
A. I don't know.
Q. Were you with the company at the end of 1991?
A. I don't think so. I believe I left in November of 1991, but I -- I don't have a specific date impressed in my mind. I think -- I believe it was 1991, late 1991, when I left the company.
Q. Well let me ask you this: Based upon the

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information that's set forth on the RJR share of smokers 18 to 24 in the graph that's before you as part of Exhibit 1046, as of the end of 1990 with the share of smokers at 7.7 percent, would you agree that as of that time, Camel had established itself as an effective brand to reach younger adult smokers?

MS. BIXENSTINE: Objection, mischaracterizes the graph.

A. Could you restate, please. I'm sorry.

Q. Sure. Based upon the change in share of smokers in the 18-to-24-year-old age-group from 1987 to 1990, the end of 1990, which went from 2.5 percent to 7.7 percent --

A. Uh-huh.

Q. -- would that be sufficient evidence --

MR. TAYLOR: Well actually, sir, it went from 2.5 to 6.6 as you've stated your question, but you may -- I believe. I don't mean to be interrupting or rude to you, but I -- but I do think.

MR. FINZEN: Well I don't believe so. Let me -- let me state it again.

MR. TAYLOR: Okay. Well then I apologize for interrupting you.

BY MR. FINZEN:

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Q. From the beginning of 1987 when the share of smokers is shown as 2.5 percent -- percent to the end of 1990 where it is shown as 7.7 percent --

A. '91 you're --

Q. You read --

MS. BIXENSTINE: That's '91.

MR. TAYLOR: It's '91.

A. 6.6 goes with '90.

MR. TAYLOR: You can't have the '91 figures until '91's over.

Q. Let me ask you this, folks: Look at the left-hand margin where it says "YEAR 1987"?

A. Yes, sir.

Q. And then the next year says "1988"?

A. Yes, sir.

Q. Is your testimony the space between where it says "YEAR 1987" and "1988" is 1988 data?

A. I don't think -- I don't think I've testified as to what this --

Q. No, I'm asking you. Your counsel has said it is. I'm asking if that's your understanding.

MR. TAYLOR: That would be -- you know, I've never seen this thing either before, but my reading of it probably would be, but hell, I don't know. I mean --

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A. Yeah, I'll state to you what my opinion is, but I don't know is the truth, but my opinion is the "YEAR 1990" refers to data that was gathered during that year; that is, they interviewed the person during 1990, and this is the sum of all the data of all the -- all the respondents they talked to in 1990.

Q. So on this graph, when we see 1987 as the first data point --

A. Yes.

Q. -- the slope up of that line to the next hash mark that says "1988" does not reflect consumption during the year 1987?

A. You may have me on a technicality here. This is not my -- sir, I'm not responsible for this data.

(Discussion off the stenographic record.)

MS. BIXENSTINE: Objection, calls for speculation.

(Discussion off the stenographic record.)

BY MR. FINZEN:

Q. Based upon the graph that is in front of you with 2.5 percent of the share of smokers at the beginning of 1987 and 7.7 percent at the far right at the end of the year 1990, would you agree that that change in share of smokers among 18- to 24-year-olds

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is sufficient data to prove to you Camel's effectiveness at reaching younger adult smokers?

MS. BIXENSTINE: Objection to the form of the question.

A. I'm sorry, I'll answer that with I don't know if it proves it to me or not.

Q. If in the next data point that share of smokers went to 10.1 percent, would that change from 2.5 percent to 10 percent among 18- to 24-year-old smokers prove to you Camel's effective ability to reach younger adult smokers?

A. It all depends on a person's definition of what the terms mean, and the fact that it goes from one number to another number is just a matter of fact. It either does -- did or did not do it, and interpreting what that means is what your question is about, and I don't know what you mean by the terms you've used.

Q. So you don't know what a change between 2 -- 2.5 percent and 7.7 percent means?

MS. BIXENSTINE: Objection.

A. It means it increased its share by the difference of those two numbers. That's what it means.

Q. And that would be a 300 percent increase, would

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it not, sir?
A. It could be the numbers -- it would be exactly what the numbers say it is, and you can divide the numbers or however you wish to do it, but, you know, the numbers are the numbers.
Q. Well --
A. And I agree that the -- that Camel's share of smoker numbers went up from that period.
Q. And it went up by the year 1991 beginning on this graph by 300 percent; correct?
MS. BIXENSTINE: Objection, asked and answered. You're badgering the witness.
MR. TAYLOR: Objection.
A. It went from 2.5 to 7.7.
Q. And is that a 300 percent gain, sir?
MS. BIXENSTINE: Objection.
MR. TAYLOR: Objection.
A. The second figure is three times larger than the first or very nearly so.
Q. And if in the next year the figures showed it was 10 percent, that would be a 400 percent increase; --
MS. BIXENSTINE: Objection.
Q. -- is that correct?
MS. BIXENSTINE: Objection.

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MR. TAYLOR: Objection.

A. That is correct.

Q. And my question to you is: If you recall Exhibit 1043 -- why don't you -- why don't you put that in front of you.

MR. TAYLOR: This is 1043.

Q. The last page of that document, which was the memo from Mr. Pennell to Mr. Sanders.

A. Okay.

Q. In the last page in the first sentence Mr. Pennell said, based upon the data that was available for 1988, "In conclusion, CAMEL has proven its ability to effectively reach younger adult male smokers ...." Do you see that?

A. I see that, yes.

Q. And I believe you testified earlier that based on the data in this document, you did not believe that it had proven that as far as you were concerned.

MS. BIXENSTINE: Objection.

Q. Is that correct?

A. I believe what I said was my standards of proof are higher than Mr. Pennell's.

Q. And referring you back now to Plaintiffs' Exhibit 1046, would the increase shown on

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Bates-numbered page 0901 of share of 18- to 24-year-old smokers over the time period shown on the graph from 2.5 percent to 7.7 percent meet that higher standard of proof that you would require with regard to whether Camel had proven its ability to effectively reach younger adult smokers?

MS. BIXENSTINE: Objection, asked and answered.

A. It's a hypothetical question you're giving me. I'll -- I will answer it. I'll say that if it went up one more time, then I would consider it, you know, largely proven, that it -- that it did have appeal to younger adults, younger adult smokers.

Q. And based upon the -- the dates that are shown on that graph, these increases shown here are the increase -- increases shown since the repositioning; correct?

MS. BIXENSTINE: Objection.

A. They're shown since 1987. I don't know when such a repositioning was, if there was one.

Q. At the beginning of your deposition yesterday, Mr. Sanders, you mentioned that when you had been -- had your --

MR. TAYLOR: Mr. Nordine.

Q. I'm sorry. Mr. Nordine, pardon me.

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When you had had your deposition noticed in the Florida action --

A. Yes.

Q. -- some time ago, you had contacted RJR.

A. Yes.

Q. I can't recall and pardon me if I asked you this, as to what year that was.

A. It was about one year from today, one year ago today.

Q. So it would have been sometime in 1996?

A. Yes.

Q. When you went to R.J. Reynolds to notify them that you had been contacted with regard to a deposition, were you obligated by any agreement that you had with R.J. Reynolds to -- to so notify them?

A. No, I don't believe I was.

Q. And were you obligated by any agreement that you have with R.J. Reynolds to have notified them with regard to your deposition here today?

A. No, I was not obligated to do that.

Q. And other than that Florida deposition notice and the one here today, has your deposition been noticed in any other matter related to tobacco and R.J. Reynolds?

A. No, the Florida and this one. Oh, and I'm

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sorry, that one has -- we have not received a deposition on that one as I understand, just a request.

Q. And I wasn't trying to trick you when I said "with regard to your deposition here today." I meant this particular proceeding.

A. Okay.

MR. FINZEN: Those are all the questions that I have.

THE REPORTER: Off the record, please.

(Discussion off the record.)

EXAMINATION

BY MS. BIXENSTINE:

Q. Mr. Nordine, I'm Kim Bixenstine. We've met before, and I represent R.J. Reynolds Tobacco Company. I have just a few questions for you today.

You mentioned yesterday that R.J. Reynolds used National Family Opinion for some period of time to conduct product testing; is that correct?

A. That is correct.

Q. Can you explain to us briefly what product testing is.

A. I will try, although that is not my area of expertise. Every -- every brand the company makes, because there's different crops and different changes

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over a year, as an ongoing basis must evaluate whether their products are -- continue to be acceptable to their consumers and to other groups that they are concerned about. So on an ongoing basis Reynolds will ship blind product -- you can't tell what brand it is, it's in a white box, a white package -- to a sample of some sort of customers that they're concerned with. So for instance, if Winston were doing it, they might send them to Winston smokers and Marlboro smokers as an example. They would ask those people to smoke a pack or two packs, then record what their perceptions and likes and dislikes of the brand are and send the information back.

That was done at National Family Opinion for many years. That was the source of our product testing information.

Q. To your knowledge, was NFO ever asked by Reynolds to conduct product testing on anyone under the age of 18?

A. Not in -- to my knowledge, no.

Q. And during the period of time you were employed by R.J. Reynolds Tobacco Company, from 1975 through 1991, to your knowledge, were product tests ever conducted on persons under the age of 18?

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A. Not to my knowledge.
Q. Yesterday Mr. Finzen asked you some questions about data collected by National Family Opinion on 14- to 17-year-old smokers. Do you recall that?
A. I recall that.
Q. And did I correctly understand you to say that the data on 14- to 17-year-olds collected by National Family Opinion came from or through the female head of household?
A. That is my understanding, yes.
Q. And so in most cases, that would be from the mothers of those teenagers?
A. In many cases.
Q. Is that --
The female head of household generally refers to the mother in the household?
A. I presume that's true, yes.
Q. As a statistician, did you believe that the data collected by NFO on 14- to 17-year-olds was a representative sample of 14- to 17-year-old smokers in the United States?
A. No.
Q. And why not, sir?
A. The sampling scheme was too nonrandom. To a statistician, the sampling frame was very, very

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weak.
Q. And as a statistician, would you say that that data collected by National Family Opinion on 14- to 17-year-olds was reliable?
A. It was -- it was internally consistent is all I would say about it. It was not -- it was not a representative sample, but its bias would stay the same over time is what my belief was.
Q. Okay. Were there any other problems with the data in addition to the fact that it wasn't representative?
A. I don't think there were major problems with it aside from that. There were minor things, like people would record the wrong brand or they'd misrecord their brand, but minor details.
Q. Was it a very large sample of 14- to 17-year-olds?
A. I don't recall.
Q. Did you ever use that data?
A. I looked at it was all. I don't recall using it in any of the reports that were referred to here.
Q. Do you ever --
A. In any reports.
Q. Do you recall ever using it for any of your strategic research, the data on 14- to 17-year-olds?

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A. I don't recall doing so, no.
Q. I wanted to read to you from yesterday's testimony something that I was confused about. This is on page 143 of yesterday's transcript, lines 14 through 18. The question was: "And separate and apart from that memorandum, while you were there, from 1975 on, did you have an understanding in the research that you were involved in that the RJR products were losing market share among the under-18-year-old smokers?"

Did you do any research on under 18 while you were at Reynolds?
A. I didn't understand the beginning of your question at all. It was hard --
Q. Okay.
A. -- to understand what -- where you were coming from, Kim.
Q. I'm just reading the question from Mr. Finzen, and I also had problems with that question.

MR. FINZEN: Objection.

Q. If -- I can show you the transcript, but the question was: "... from 1975 on, did you have an understanding in the research that you were involved in that the RJR products were losing market share among the under-18-year-old smokers?"

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MR. FINZEN: Objection.

Q. And my question is: Did you ever do any research on under-18-year-old smokers while you were at Reynolds from 1975 to 1991?

A. What do you mean by "research"?

Q. Did you ever do any strategic research where you interviewed or did any analysis of under 18?

A. The only exposure that I have to under 18 would be in the NFO sample that I have stated that I had looked at periodically, so I was aware of that. That data was not used by me, but I was aware of that data. I did not in any other instance conduct research with any smoker under 18, but I was aware of that data, you know, so if you --

Q. But you yourself did not do any research on under 18?

A. I did not.

Q. Did you ever use the term "FUBYAS," F-U-B-Y-A-S, to refer to anyone under the age of 18?

A. No.

Q. And during the period of time that you worked at R.J. Reynolds Tobacco Company, from 1975 through 1991, did you ever understand anyone else to use the term "FUBYAS" to refer to anyone under the age of 18?

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A. I never -- never in my presence.
Q. And did you under -- strike that.
What age-group did you understand the term "YAS," young adult smoker, to refer to?
A. 18- to 24-year-old smokers.
Q. I'd like to direct your attention now to two of the exhibits marked yesterday, Exhibits 1030 and 1033. Do you have those in front of you?
A. Yes, I do.
Q. Okay. Referring to Exhibit 1030, on the first page of that document, which is a document dated July 3rd, 1974 to a Mr. F. H. Christopher, Junior, from a D. W. Tredennick, on the first page, which is Bates stamped 50122 1308, there is a chart at the bottom of that first page. Do you see that?
A. Yes, I see the chart.
Q. And it talks about "Age Started Smoking." Do you see that?
A. Yes.
Q. What is the source of that data on the age started smoking?
A. The table says Department of Health, Education, and Welfare.
Q. And do you understand that to be the United States Department of Health, Education, and Welfare,

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U.S. government department?
A. I don't know. I presume so.
Q. Do you know how the Department of Health, Education, and Welfare obtained that information on the age at which persons started smoking?
A. No, I have no knowledge.
Q. Okay. Do you know if they simply asked people how old they were when they started smoking?
MR. FINZEN: Objection.
A. I don't know what they did.
Q. Do you think that information obtained by asking someone, for example, in his forties how old he was when he started smoking is a reliable way of determining the age at which one started smoking?
A. I don't know.
Q. Is that how you would obtain reliable information on age started smoking, asking someone for his recollection?
A. If that were an objective of a study I was doing.
Q. Are there better ways of obtaining information that -- about the age at which one started smoking than asking for a recollection?
A. I'm sorry, I'm sorry, I don't -- I don't know how a person would do that well. I am sure that a

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person could criticize any definition very effectively. I don't know what a better one would be or if there was any way to do it.

Q. Are self-reports like that generally accurate and reliable?

MR. FINZEN: Objection.

A. I don't know. I don't know enough about what they did on this study really to comment.

Q. Do you know how the Department of Health, Education, and Welfare defined "started smoking"?

A. I have no idea.

Q. So you don't know whether it meant taking the first puff or smoking daily or something else; is that right?

A. Yeah, I -- I know nothing.

Q. So do you actually know what percent of smokers start smoking on a regular basis before the age of 18?

A. No.

Q. Turning to Exhibit 1033, which is a memorandum from Diane Burrows to P. E. Galyan --

A. Yes.

Q. -- dated September 20th, 1982, on the first page of that document, which is Bates stamped 50198 8846, there's a chart and there's some other data in this

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document. Do you know what the source of that data is?

A. No, I -- I can't see it listed there.

Q. Does it say --

On the first page is there a reference to HEW studies?

A. Oh, right above there in the writing you're referring to, "three HEW studies."

Q. Does --

Does the source of that data also appear to come from the Department of Health, Education, and Welfare?

A. You know, I don't know. It's associated with it. I don't know.

Q. And again, if it does come from HEW, don't -- you don't know what definition they use for "start to smoke"?

MR. FINZEN: Objection.

A. I am not familiar with the HEW study.

Q. There was some discussion yesterday, Mr. Nordine, about the relative importance of first usual brand and -- first usual brand strategy and a switching strategy. Do you recall that?

A. Yes.

Q. Have you ever done any analyses on switching by

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smokers?

A. I've done extensive switching analyses.

Q. And as part of that analysis, did you analyze switching behavior among young adult smokers aged 18 to 24?

A. Yes.

Q. What, if you can summarize it briefly, were the results of that analysis?

A. The extent to which people switch brands decreases with age so that the -- the percent of people who switch brands is highest in the 18-to-24 group, then it's lower in 25 to 34, and fewer people switch when they become 35 and older.

Q. Do you recall any specific findings as to the percent of smokers in the age-group 18 to 24 who switch brands each year?

A. Pardon me, come again. I'm --

Q. Okay.

A. I -- would you repeat it, please.

Q. Do you recall any specific findings of your analysis as to the percent of smokers in the young adult smoker age-group, 18 to 24, who switch brands each year?

MR. FINZEN: Objection.

A. It depends upon what the definition is. It's a

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difficult question to answer because there's -- there's -- there's a question defining when a person has switched and when they haven't switched. So it's difficult for me to give you any specific number.

Q. As you defined it in your analysis, could you tell us what that definition was and -- and what your finding was as to the switching rate among young adult smokers.

MR. FINZEN: Objection.

A. I -- I can't give you a number. Just that it was substantially higher. I can't give you a number.

Q. Based on your findings and your analysis on switching behavior, did you believe that it was important for the company, R.J. Reynolds Tobacco Company, to try to get smokers of competitive brands to switch to Reynolds brands?

MR. FINZEN: Objection.

A. I believe it was important for the company to have products and advertising programs that had -- that were received positively by 18- to 24-year-old smokers. I believe that people who were in the process of adopting a first usual brand in that age-group might thereby adopt that brand as a first brand and also many switchers might also switch to

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the brand.

I hope that answers your question, but I --

Q. Well is it fair to say then that you thought that there was a business opportunity for Reynolds to attract switchers in the 18-to-24-year-old group?

MR. FINZEN: Objection, leading.

A. Yes.

Q. Shifting to another topic, Mr. Nordine, were you asked either by counsel for Reynolds or your lawyer, Mr. Taylor, if you were willing to go to Charlotte, North Carolina, for this deposition?

A. Yes, Mr. Taylor and I discussed it.

Q. Okay. And did you decline to go to Charlotte?

A. We decided that we would rather do it here.

Q. Okay.

MS. BIXENSTINE: I have no further questions. Thank you very much for your time.

THE WITNESS: Okay.

THE REPORTER: Off the record, please.

(Discussion off the record.)

ADVERSE EXAMINATION

BY MR. FINZEN:

Q. Mr. Nordine, I have a couple of questions.

Counsel for R.J. Reynolds asked you about whether R.J. Reynolds relied on the HEW data that's

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contained in Plaintiffs' Exhibits 1030 and 1033. Do you recall that?

A. I recall talking about those documents, yes.

MS. BIXENSTINE: Objection to the question.

Q. The data from HEW at a minimum was relied upon by Diane Burrows in her memorandum of Exhibit 1033; correct?

MS. BIXENSTINE: Objection. It misstates my question.

A. The data was used by Diane Burrows in her memo.

Q. And it was used as part of the young adult smoker project report as well, was it not?

A. I don't recall. It could well have been.

Q. Do you recall Ms. Burrows writing in that report that the majority of smokers, male smokers, became smokers before the age of 18?

A. We have talked about so many reports so far it's hard to pin down a particular one.

MR. TAYLOR: What's that number, if you feel strongly about it? Is this it?

MR. FINZEN: That's it, Plaintiffs' Exhibit 1031?

MR. TAYLOR: Yes, sir.

MR. LAYDEN: It's 1031, yeah.

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MR. TAYLOR: Let him -- he'll direct you to a page.

THE WITNESS: Okay.

MR. TAYLOR: Save your energy.

MR. FINZEN: Why don't we go off the record for one minute.

THE REPORTER: Off the record, please.

(Discussion off the record.)

BY MR. FINZEN:

Q. Mr. Nordine, I would ask you to turn to page two, which is Bates stamp numbered with the last four numbers 8471, of Exhibit 1031.

A. I have 8471.

Q. Do you see under the heading Arabic 1, "VOLUME," the first bullet point?

A. Yes.

Q. "Less than one-third of smokers ... start after age 18"?

A. Yes.

Q. Is it your understanding that Ms. Burrows relied upon the HEW data to conclude, as she did here, that less than one-third of smokers start after age 18?

A. I don't know. If it's not printed, I don't know for a fact what it was.

Q. Was there some other source of data inside RJR

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showing the age at which smokers began smoking other than the HEW data?

A. Not that I'm aware of. That wasn't inside Reynolds either, though, of course.

Q. Was there any documentation of information on when individuals started smoking from any source that was kept by R.J. Reynolds other than the HEW data?

A. I don't know.

Q. Counsel also asked you about the NFO data.

A. Yes.

Q. And she asked you about the reliability of that data.

A. Yes.

MS. BIXENSTINE: Objection.

Q. Did RJR rely on that data for any purpose?

MS. BIXENSTINE: Objection to the form of the question. You're talking about the 14-to-17-year-old data?

MR. FINZEN: The NFO data, period.

MS. BIXENSTINE: My question went to the 14-to-17-year-old data.

MR. FINZEN: And my question goes to the NFO data.

Q. Did R.J. Reynolds rely upon the NFO data for any purpose?

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A. They relied upon it for a source of switching gains among smokers 18 and older for brand. It was their only source of that information for many years.

Q. And that information collected for that purpose was collected in exactly the same way as the information on the 14- to 17-year-olds; correct?

MS. BIXENSTINE: Objection.

A. It was collected through the female head of household, as all data was in the NFO, to my understanding.

MR. FINZEN: Thank you, sir. I have no further questions.

THE REPORTER: Off the record.

(Deposition recessed at 12:40 o'clock p.m.)

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C E R T I F I C A T E

I, William C. LaBorde, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of RICHARD C. NORDINE at the time and place aforesaid; and that the foregoing transcript consisting of pages 266 through 395, Volume II, is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Las Vegas, Nevada, this 9th day of May 1997.

WILLIAM C. LaBORDE
Registered Professional Reporter
Notary Public

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C E R T I F I C A T E

I, RICHARD C. NORDINE, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 266 through 395, Volume II, and that said transcript is a true and correct, full and complete transcription of my deposition, except per the attached corrections, if any.

(Please check one.)

____ Yes, changes were made per the attached (no.) ____ pages.

____ No changes were made.

RICHARD C. NORDINE
Deponent

Sworn and subscribed to before me this day of 199__.

Notary Public

My commission expires: (WCL)

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